HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

(EPA Policies and Management for Enforcing the Superfund Law)

(98-74)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON PUBLIC WORKS AND
TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

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HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

(EPA Policies and Management Practices for Enforcing the Superfund Laws)

THURSDAY, MAY 26, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. LEVITAS. The subcommittee will please come to order.

This morning, the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation continues with its inquiry into the matter of hazardous waste contamination of water resources and the EPA's implementation of the 1980 Superfund law for cleaning up abandoned hazardous waste sites.

The primary purpose of today's hearing concerns a recently released internal study by the EPA Office of Policy and Resource Management—a report that points out that there have been a number of management constraints and organizational problems that have seriously and adversely affected the Superfund and RCRA hazardous waste programs.

I would like to say that I think this study, or report comes at a very opportune time, both for our review and for the Agency itself, for we seem to be at a midpoint, and much of what we discuss here today will in many respects set the stage for phase 2 of our investigation, and perhaps EPA's future as well.

To some extent, this report reminds me of the symbol of the old Roman god Janus: two faces—one perhaps looking at the past and another looking toward the future. And, I think we must also look back at the past so that we can learn from what has transpired as we simultaneously attempt to go forward.

In that regard, I look forward to hearing from our witnesses today. Among other things, we look to know why this study was initiated, and how it was prepared. We want to know what other reviews of the hazardous waste programs are being contemplated for the future.

Also, with respect to the future, I want to announce that later today, before this hearing is concluded, I expect to discuss and make available an interim staff status report on our investigation

of the hazardous waste problem and the EPA's management of the Superfund Program. Among other things, this report outlines some of the hearings that the subcommittee will most likely be holding in the weeks ahead, as well as some of the witnesses we expect to hear from.

Finally, I would like to note that prior to his confirmation by the Senate, Mr. Ruckelshaus and I discussed this subcommittee's investigation of the EPA, and I expressed to him my expectations about what lies ahead.

I think it is a fair characterization of his response to say that he welcomes our oversight and looks to cooperate fully with our effort, and that he expects, as do I, that what will result from our efforts will contribute to the EPA and the national effort to get on with the job of cleaning up this Nation's hazardous waste problem, and to ensuring a clean and safe environment.

Let me say one more word, because Mr. Ruckelshaus was confirmed I think just about a week ago today. It is my impression not only from everything I have heard but from judgments which I have formed myself, that if anyone is able to get EPA back on the right track and restore credibility to the Agency, which it so desperately needs in order to do its job, Mr. Ruckelshaus is the person who can do that.

By the same token, Mr. Ruckelshaus' coming onboard is not in and of itself any assurance that there will be a change in direction. That will require a change in policy, not simply a change in personnel. It will require restoration of resources, both human and financial, and it will require Mr. Ruckelshaus to be given a mandate to enforce the laws which Congress has enacted to protect the public health and environment and to do so vigorously.

This subcommittee will be watching very closely in the next few weeks and months ahead to see whether these circumstances occur. I hope they do. I sincerely hope they do, and will do everything I can to assist Mr. Ruckelshaus in his commitment to get the Agency back on track.

I thought it was very significant in his swearing in ceremony that, in his response to the remarks of the President, he said words in effect that—turned to the President and said, "With your support I cannot fail. Without it I cannot succeed." I think that was a very significant statement, and we will be watching very closely.

The gentleman from New York, Mr. Molinari, do you have an opening statement?

Mr. MOLINARI. I have a brief statement, Mr. Chairman. I have had the opportunity to review the internal report that EPA has issued with respect to Superfund modifications, and it is refreshing to see such a remarkably candid review of the program. Over the past few months, Members of Congress have been critical of both the law and its administration. Yet ex-Agency officials denied or downplayed program problems. Now those points made by Congress are being acknowledged by the new team at EPA. This is very encouraging to see.

I am now totally confident that under the new Administrator and the people he is bringing into the Agency there will be a change for the better in the implementation of Superfund. Mr. Ruckelshaus will make philosophical changes in the regulatory

framework which will facilitate achieving the goal of cleaning up hazardous waste sites. While various committees in the Congress which have dealt with this subject matter in the past may have an abiding interest in questioning the current officials at EPA, it would be my hope that they would refrain from calling further hearings on past problems until a reasonable period has elapsed for the new leadership to get its house in order.

The Superfund Program is still in its infancy, and problems of the past notwithstanding, EPA must be given time to work out its problems and further define the policy which EPA must pursue to clean up toxic waste sites. I believe this will be of great assistance to EPA, to enable it to get on its feet again and continue the arduous task of ensuring that our environment will be safe for future generations.

I would like to add to what you have said, Mr. Chairman, that I have a great deal of confidence in the new Administrator. And I agree that there is a change in policy, a change in direction that is needed along with additional resources. I would like to think that Mr. Ruckelshaus would not have taken on this assignment unless he had a commitment in advance from the President and others, that he will get that which he needs in order to do the job. The man has an outstanding reputation, and I think he made some sacrifices to take on this very difficult assignment. I think we can all look forward to a brighter future.

Already I have seen a great spirit of cooperation. I think one word should be said about the Acting Administrator, Mr. Verstandig, who did a remarkable job of holding the helm during the interim period and effectuating some of the changes that were long overdue.

I am optimistic, Mr. Chairman, and I hope that this hearing is the beginning of a new era in the EPA to restore the confidence of the public in this very important agency.

Mr. LEVITAS. Does any other member have an opening statement they care to make at this time?

The gentleman from Kentucky.

Mr. SNYDER. Mr. Chairman, I have a statement but at this time I would rather be brief and just congratulate the Agency on its apparent resolve to swiftly initiate the changes necessary to get this program back on track.

I will ask unanimous consent to revise and extend my remarks and submit my statement.

Mr. LEVITAS. Thank you, Mr. Snyder.

Without objection, so ordered.

[The statement of Mr. Snyder follows:]

OPENING STATEMENT OF HON. GENE SNYDER

Thank you, Mr. Chairman. It's a pleasure to be here this morning to hear testimony on what appears to be a refreshing bit of reexamination by EPA of its administration of the Superfund program.

The policy changes recommended in the EPA's internal May 1983 report on Superfund and RCRA management and the announcement by the Acting Deputy Administrator on May 13 appear to hold great promise for the accelerated cleanup of hazardous waste sites. I trust we'll learn more about the specifics through the testimony of the witnesses at today's hearing.

I will be particularly interested in learning how these policy and program changes will affect the cleanup of one of the 419 Superfund priority sites which happens to be located within the Kentucky Fourth Congressional District. Parochial interests aside, however, I congratulate the Agency on its apparent resolve to swiftly initiate the changes necessary to get the program back on track.

Mr. LEVITAS. Let me make one observation for the benefit of the witnesses and members of the committee today. I just came from the whip meeting. I want to alert everybody that we can expect several votes during the course of the morning. That is just a fact of life, so be prepared for that.

I understand Mr. Cannon has a need to brief Mr. Ruckelshaus at some point this morning and that Mr. Lucero has another engagement he needs to get to at 12:30. I will be mindful of that. I am sure the members of the committee will, also.

The committee will continue in this hearing, and in the others that will be referred to in the interim staff report that is going to be made available later today, to act in an objective and thorough way. We will continue to conduct our investigations and our oversight by committee investigation, and not by press conference. That has been our practice in the past; that will continue to be our practice. We will let the facts speak.

With that I will welcome Mr. Cannon. He is Associate Administrator for Policy and Resource Management, U.S. Environmental Protection Agency, who is accompanied today by Lewis Crampton and Mr. C. Morgan Kinghorn. Mr. Crampton is Director of Office of Management Systems Division. Mr. Kinghorn is Comptroller, Office of the Comptroller.

Mr. Cannon, I don't know the precise name of the Indian who was the last of the Mohicans, but you ought to find out and put it on your wall. In any event, if you three gentlemen would raise your right hand.

[Witnesses sworn.]

Mr. LEVITAS. Thank you very much. We welcome you here. We look forward to your testimony. Your statement will be made a part of the record in its entirety and you may proceed as you desire, Mr. Cannon.

TESTIMONY OF JOSEPH A. CANNON, ASSOCIATE ADMINISTRATOR FOR POLICY AND RESOURCE MANAGEMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY LEWIS CRAMPTON, DIRECTOR, OFFICE OF MANAGEMENT SYSTEMS AND EVALUATION; C. MORGAN KINGHORN, COMPTROLLER, OFFICE OF THE COMPTROLLER

Mr. CANNON. Thank you, Mr. Chairman. I just have a brief statement. As you mentioned, I have Mr. Crampton and Mr. Kinghorn here who will be able to answer many of the more detailed questions concerning our management study of the Hazards Waste Program. Since my statement is brief, I will just read it.

I am Joseph A. Cannon, Associate Administrator for Policy and Resource Management at EPA. Within my office is the Office of Management Systems and Evaluation. OMSE is responsible for the operation of the Administrator's management accountability system. This system tracks quarterly performance against commitments for each of the Agency's senior managers and their pro-

grams. As part of this system's operation a management performance report is prepared each quarter and presented to the Administrator.

In the past, under the previous Administrator, each quarter's report was followed up by a letter to each of her assistant and regional administrators recognizing their noteworthy accomplishments, and directing them to take corrective action wherever significant shortfalls occurred. In cases where particularly troublesome problems appeared the Administrator would direct my office to conduct what we call a management review. These reviews are short-term investigations that recommend management options for correction.

The report, which is the subject of my testimony today, is the product of one of our recent management reviews. It was first commissioned by former Administrator Burford the first week in February after she reviewed the management accountability system report for the first quarter of fiscal year 1983. At that time she was distressed by the poor performance by the Office of Solid Waste and Emergency Response and asked my office to undertake a review of the Superfund and RCRA Programs.

Soon after the Office of Management Systems and Evaluation began its management review the Administrator left the Agency. About the same time Lee Thomas was appointed as Acting Assistant Administrator for the Office of Solid Waste and Emergency Response, replacing Rita Lavelle who had also recently left. Lee, upon learning of our review, fully endorsed it, offering the full cooperation and support of his staff. As a result, our management review became a joint venture with three purposes, which were to: First, develop an agenda for action by developing a new set of management options for the Superfund and RCRA programs over the next 2 years, second, propose operational and structural changes to eliminate barriers to program success after analyzing current management procedures, and third, develop a new set of key indicators of program performance to be used by Agency senior management to monitor program accomplishment.

Lew Crampton, who heads the Office of Management Systems and Evaluation, will answer questions on the details of the findings and recommendations drawn by his office in the course of this management review. Principally we found that while both the Superfund and RCRA have achieved a number of significant accomplishments, both are in need of a clearly defined set of goals answering the question of how to deal with competing priorities, and a set of new operating procedures to expedite action.

Our recommendations for the Superfund Program center on:

Expanding use of the removal program and expediting removal actions,

Delegating authorities and responsibilities in the remedial program from headquarters to the implementation levels,

Resolving role conflicts among managers in the remedial and enforcement programs, and finally,

Eliminating organizational and other possible barriers to program success.

For RCRA, our recommendations emphasize the need for the Agency to step back and sort out its goals and expectations for this

program, both for the next few years and in the long term. No other management reform for RCRA will make sense unless first we set the basic direction for the program.

I might add in closing, following up on the chairman's image of Janus, we are more looking forward than looking back, we hope, Mr. Chairman. Lee Thomas is moving ably and swiftly to make many of the changes we have recommended, and I feel confident that these two important programs are already beginning to respond to his leadership.

Thank you very much.

Mr. LEVITAS. Thank you, Mr. Cannon. As I understand it, Mr. Crampton, Mr. Kinghorn, will not be making an opening statement on their own, but will simply be prepared to respond to specifics.

Mr. CANNON. Yes.

Mr. LEVITAS. You made reference to the genesis of the report and noted that in February the former Administrator gave directions to you to prepare such an evaluation. Did you personally discuss that with Mrs. Burford?

Mr. CANNON. Yes.

Mr. LEVITAS. Would you describe that conversation and give us some insight as to what Mrs. Burford specifically said to you, why it was occurring at this particular point in time, and what it was she wanted to see as a result of it?

Mr. CANNON. Sure; maybe I can give you a little fuller background on the context. We have, as I mentioned in my statement, something called the management accountability system. This is a tracking system to track major commitments. We had begun the fiscal year reporting and oversight of the program activities in Superfund and we were briefing the Administrator on the performance of the different Assistant Administrators. It just turned out that we had had difficulty getting goals and measures from the Superfund Program from the Office of Solid Waste and Emergency Response.

So at the time of our briefing of the Administrator, Mr. Crampton, myself, and our staff sat down to talk with her about the problems. And just in the course of seeing the not very good performance, Mrs. Burford said we should conduct one of our management reviews. She also wrote personal letters to each of the Assistant Administrators. And there was one that she had written to Rita Lavelle, which I think the committee has a copy of, which said that we couldn't wait until the end of the management accountability system process to figure out the problems with Superfund, and that she was requesting this management study at this time.

Mr. Crampton may have more details on that, since the specifics went to his office.

Mr. LEVITAS. Mr. Crampton.

Mr. CRAMPTON. Only to say that we had our entire accountability system branch staff in to brief the Administrator on the performance of all the Agency's Assistant Administrators. And it turns out that most of this meeting which lasted approximately 1 hour and 15 minutes was taken up with OSWER's performance. The three major problem areas she had were: One, that OSWER had failed to supply her with any data on enforcement in that one of their data systems had failed and the program had not gotten any kind of

backup system into place to supply us with enforcement data; two, her concerns about what she considered to be a poor effort in the Superfund Remedial Program, which is the long-term cleanup program in Superfund. The program's target had been to come up with 12 remedial investigation feasibility studies and the program had only accomplished 4 of these by the end of the quarter. It was evident the program was living off a fairly large commitment made earlier at the end of the previous fiscal year.

Finally, I think she was distressed, and we really got this from her in general comments, at the general slowness of our actions, slowness of our response to particulate site situations. As a result my office was tasked with this management review. Indeed, we began the effort just about the time when Rita Lavelle left. The meeting was held with Mrs. Burford on January 31, I believe. The letter you have in your hand was dated February 4. So although the Administrator was writing to Ms. Lavelle, she was no longer employed at the Agency by that time.

Mr. LEVITAS. Well, as Mr. Molinari has already pointed out in his opening remarks, many of the points that your report makes were the very points that this subcommittee was raising in our hearings through the last year or so. The responses we were getting from high officials at EPA, including Mrs. Burford, were quite different from what your analysis report and conclude. In fact, the date of Mr. Crampton's explanation right now is very interesting.

Mrs. Burford testified before the Appropriations Committee earlier this year, March 1. She says: "I have also instituted significant changes in our enforcement operations and our results in late 1982 and 1983 bear witness to the fact that our approach is now providing more effective and coordinated enforcement than existed in the past." She also said at that time, "We have energized the Nation's hazardous waste program. We have improved EPA's performance." Referring to the past she said, "In many cases firm legal commitments have been delayed in a managerial system that seemed to require a utopian plan before a program could take practical first steps to address the pressing environmental concerns."

Also at that hearing she said, "In terms of regulatory reform, in terms of the New Federalism, in terms of doing a better job producing more environmental decisions as required by the statutes, actually getting out there for the first time trying to clean up America under Superfund, I am proud of that record."

Now, your report says among other things, talking about management: "Far from the ideal of top-down management, the program has endured something more akin to management by hung jury." You also say: "Conflicting goals and perceptions have frequently led to interoffice disputes that have seriously interfered with efficient administration of the program." And then in retrospect you say that "it is clear that despite its accomplishments over the past 2 years, the Agency never mobilized its full resources to implement the program in a coordinated way."

I could go on. There are many examples from testimony before this committee, the Appropriations Committee, in your report.

What I am trying to find out is, what was it that you were able to ascertain and discern between February and the date of your report, looking retrospectively, that top managers at EPA appar-

ently were unaware of when they were making representations to committees in the Congress who were considering oversight, legislation, and appropriation?

Mr. CANNON. What was it we were able to discover, or how were we able to discover it?

Mr. LEVITAS. How did you find out and reach the conclusions you reached, which are clearly at odds with what we were being told by top management officials at EPA or for over a year and a half?

Mr. CANNON. Maybe Mr. Crampton can talk about the details of how the study was carried out. But it was clearly the first management review of the program. And like many, many things, of course, were happening at the Agency. There were many bright assurances that things were proceeding very well. One of the things we just discovered in this review is that things weren't working as well as some of the assurances that had been given from Ms. Lavelle to the Administrator.

This study was a fairly indepth effort to interview many people in the regions and in headquarters. We viewed it as a kind of an ab initio review, a review where we didn't have any preconceptions and the staff people just went in and looked at it. All I can say is the results speak for themselves. I don't know what other spin to put on it.

Mr. LEVITAS. Mr. Crampton, would you like to add to that?

Mr. CRAMPTON. A couple of things. One is that I didn't write the statement that Mrs. Burford made when she testified on the budget. We did indeed try to look at the program from a wholly objective point of view. Mr. Cannon is correct in saying that although the accountability system was continually reporting to the Administrator on the outputs that the program was creating, Ann was also visiting fairly regularly with Rita and having conversations with her.

I suspect Rita was giving her assurances that things were getting better. Indeed there were I believe some structural changes made in the enforcement program which you can ask Mr. Lucero and others about later on. I think it is also fair to say that Anne Burford wanted an honest effort here. We noted in our conversations with her an increasing degree of frustration on her part. And indeed, in the course of our last meeting with her, she was quite angry at what she felt to be a lack of performance in that program. So she said go in there and find out what is going on.

I am not even sure of the numbers any more. And I am not—another word she used at another time——

Mr. LEVITAS. What was the date of this meeting, Mr. Crampton?

Mr. CRAMPTON. The meeting was January 31.

Mr. LEVITAS. The testimony I referred to was March 1. The testimony that she gave that I quoted from was March 1 of this year. Almost a month after——

Mr. CRAMPTON. You are right. I am at a loss to explain the variances in rhetoric. We were in the course of——

Mr. LEVITAS. I am not asking these questions for purposes of incrimination.

Mr. CRAMPTON. Sure.

Mr. LEVITAS. The reasons I am asking these questions is that Congress makes decisions based upon testimony it receives from

agency witnesses, whether it is EPA or anybody else. In this instance we are looking at a situation where at least there was great concern by a number of committees in Congress about what was going on, and we would keep being reassured, whether it was Rita Lavelle or Gene Lucero or Bill Hedeman or Anne Burford, that our concerns were really misplaced. We, in fact, weren't giving enough credit to the great accomplishments. And just the chronology you describe——

Mr. CRAMPTON. Congressman, I don't think it is unusual for a person who heads a major agency like EPA, who has commissioned an internal management study of what is going on in the program, to continue to adhere to the same line that had been set forth previously until the results of the investigation are in. We had not, so far as I know, briefed her as of the March 1 date.

Mr. LEVITAS. We have got this vote going on, as I anticipated. I think we will come right back to it. But I would just simply observe this: That at the very least, that being the case, what you have described at this point, Congress was entitled to have certain disclaimers and caveats laid before us at the time of that testimony, at the very least.

The subcommittee will stand in recess for 15 minutes.

[Recess.]

Mr. LEVITAS. The subcommittee will please come to order.

Let me, rather than pursuing that point any further, I think it speaks for itself, and we may get back to it. But let me turn to another item I found in your report that was of some interest to me.

On page 5, the top of the page, this statement appears:

> A closely related policy conflict concerned whether the regions should emphasize negotiations with presumed responsible parties in order to contribute additional monies to the fund, or initiate timely removal or remedial action, and seek to recover the costs in subsequent enforcement proceedings. This conflict pitted the enforcement staff, principally the Office of Legal and Enforcement Counsel, against the Superfund program in long, protracted debates over appropriate methods to be followed at almost every site, delaying decisive action on either strategy.

One of the concerns that I have had with the Superfund Program as it has been administered, and apparently Mr. Ruckelshaus has already indicated that is going to no longer be the policy, is this so-called conflict between negotiate first and then litigate, or litigate and then negotiate, or protracted negotiations, which was—really the reality was it never touched on what I understood was the purpose of Superfund to begin with, which was not simply to get responsible parties to clean up, which could be done under existing law, and as a result of litigation or protracted negotiations, but the Superfund Program was designed to identify hazardous sites which were on a priority list and very threatening to the public health, and get them cleaned up. That the policy was to clean up. And all the other questions of negotiation versus litigation, or litigation versus negotiation, were really secondary to that decision the Congress made in 1980 in the Superfund Program.

I wonder if you could address that aspect of it as you developed this report. Did you ascertain any understanding within OSWER as to the responsibility of utilizing the Superfund as a means of going forward expeditiously to clean up, and then leave these other

issues after preliminary notification for resolution at a later time, but get the hazardous materials out of the ground, out of the way?

Mr. CANNON. I think Mr. Crampton can answer that from the perspective of having done interviews with the different people involved. I would say, though, the perception from Congress what Congress wanted is quite clear. But the actual implementation of the statute sometimes—appeared to make it a little more difficult to immediately do some of the things that I think Congress as a whole thought it was doing when it passed the legislation. But, Lew?

Mr. CRAMPTON. Sure.

Mr. LEVITAS. Mr. Crampton.

Mr. CRAMPTON. The statute first of all does distinguish between types of action that can be taken. To put it in real terms you can go right out now and make dirt fly. And there are some requirements for how serious that emergency is. You can take a little bit longer to make dirt fly, and then you can take a long, long time to make dirt fly. That is the difference between an immediate removal and planned removal and a remedial action.

The statute does set forth a definite phased approach to actually getting out there to the site and taking action. This is stated quite clearly in the National Contingency Plan which was the regulation the Agency passed to implement the statute, the NCP has some seven different stages a site has to go through before clean up action can commence. They are, as you probably know:

First, discovery.

Second, undertaking of a preliminary assessment, which shouldn't take too long.

Third, a determination as to whether or not the situation warrants immediate removal action. That is, you get the trucks out there and move the drums off site and you make dirt fly if you have an emergency situation in the field.

Fourth, if not, if it is not a so-called screaming emergency, which is a term that is used internally in the Office of Solid Waste and Management Response, then you evaluate the situation in order to determine the appropriate remedial response. That decision is basically a choice between under taking a planned removal, of which not many were done, or a remedial action, which is a long-term action that starts out with remedial investigation and feasibility study, and it takes quite a while before equipment is on the scene, construction commence, lagoons get drained, and so forth.

Obviously you have got to go through a few steps to get to the point where actual site work begins. We have to create a national priority list of high priority sites for action. We then have a set of sites we can focus on, and our task is to perform triage on those sites to figure out which are most needful of action and where you have to move first. Then finally, and this is important, we have to carefully document everything we have done to make sure we have a case at the end of all of this for cost recovery from all the parties of all the money we have spent. So I guess to make a long story short, we have a statute which had a name called Superfund which led to a lot of expectations on the part of people that things would happen instantaneously. In some cases response was rapid, in most cases it wasn't.

But, and this is important to point out, it was the statute that contemplated this longer term response. I think this is what accounts for the dichotomy that we are seeing now.

Mr. LEVITAS. Well, let me back into it another way.

Mr. CRAMPTON. Sure.

Mr. LEVITAS. To see if I can get a better understanding. In preparing your report, did you have occasion to interview and speak with the program officials in charge of the Superfund Program directly? Or did you just look at documents?

Mr. CRAMPTON. No, no. We did both. We spoke with program managers, and we looked at documents.

Mr. LEVITAS. All right. I assume in that process you not only asked them questions about what were they doing and what their problems were, but you got a sense of what their understanding of the goal——

Mr. CRAMPTON. Yes.

Mr. LEVITAS. And purpose of Superfund.

Mr. CRAMPTON. That is right.

Mr. LEVITAS. Is that correct?

Mr. CRAMPTON. Yes.

Mr. LEVITAS. All right. What I am suggesting to you, and I stand to be informed and have my views changed on the matter, my sense is that, having listened to a lot of witnesses over the last several months on this subject, that there was more of a looking at the trees than the forest, and there was a lack of appreciation of the overriding goal of getting the Superfund to clean up, as the primary objective, without minimizing the problems that you have already suggested had to be taken into account, that the driving force was quick response, clean up hazardous waste sites, particularly those which are the most threatening. Did you get that feeling, that there was that understanding, appreciation, commitment to that type of goal?

Mr. CRAMPTON. I think we stated in the report that there was indeed a conflict between goals. And we found from our interviews with program managers up and down the line that the management expectations in the Agency at the time were dedicated more to something that I call prudent fund management. Not only that, that is, not just managing the fund, but good management of the programs, so it could withstand an audit 5 years from now.

You are right when you say that Superfunds management culture was not what you might call emergency action, the red lights going, response mode kind of approach. But I think you should understand that the statute and national contingency plan do allow for such an interpretation as was held up with the time we made our management review.

Mr. LEVITAS. Well, you made reference just now to the point in your report that my questions relate to as a matter of fact. Let me share it with you again. You say in your report, a common perception, especially in the regions, was that top EPA policymakers at headquarters were primarily concerned with, prudent fund management. That is, careful conservation of the $1.6 billion available under the Superfund so as to limit the long-term demand for scarce Federal resources.

Now, obviously no one suggests people ought to waste money. But when we are talking about health threatening situations, whether they are lead contamination in Dallas, or dioxin in Michigan or Missouri, if the message that regional or other officials are getting is, now, are you going to be concerned with prudent fund management to conserve this $1.6 billion so we don't have to come to Congress in 3 or 4 years and get some more money to clean up this stuff, you are going to get a different reaction and different response than you would if top management was saying, when you have got a situation where you have got lead contamination in a poor neighborhood in Dallas, you move, you don't expose people, you clean it up, that is the point I am getting at.

Mr. CRAMPTON. I understand. And I don't think it is quite as black and white as that. Indeed, it never is in a program as complex as this, I believe. Certainly, the Superfund Program tried to be responsive at indiviual sites in a number of instances. But when all was said and done, the criteria that were erected by the Agency, the internal criteria for EPA to take an emergency response action that is, a quick action, an action that would be done tomorrow—those criteria were fairly restrictive as set forth in subpart F of the national contingency plan.

The program had every intention, however, to do the best job it could on the remedial side. Program managers probably had a different idea of how serious the degree of hazard activity was at certain sites than, perhaps, people in Congress did. But that is a natural thing to have happen. These folks were closer to the issues. There was never any intent not to do a good job on the remedial program.

It is just that the remedial program took a long time to get to the point where real, visible cleanup actions would begin. And that was the whole problem.

Mr. LEVITAS. How does that square with the concept or the policy of prudent fund management?

Mr. CRAMPTON. Prudent fund management is probably best exemplified in the national contingency plan. If you were to look there, you would see the embodiment of the prudent fund management approach. The reason for the National Contingency Fund is that the Agency was reluctant to have a policy that required it to clean up to a specific number or standard on a site. There were good reasons for that at the time. We didn't have the standards, we didn't have the numbers and we couldn't answer questions, "How clean is clean?"

In addition, we found that each site throughout the country was a wholly unique circumstance and had different characteristics that had to be addressed differently. Furthermore, if you did try to go all the way and clean up to a number specific or standard what might occur is you would spend all of the dollars in the Fund on maybe 20 to 25 sites, leaving many, many, more without any sort of treatment at all. That is why Congress, by the way, inserted the fund balancing concept into the statute.

Finally, I think it is also fair to say when we started out with this program, EPA just hadn't had the experience it neeeded to be able to hit the ground running. Hadn't had experience in figuring out such details as: what remedies worked, what kinds of disper-

sants were most effective, what kinds of containment structures would work, and so forth. So you had something called a national contingency plan which tried to introduce a more controlled approach to clean up but, in trying to carry it out, if I can borrow one of your classical references Mr. Chairman, OSWER management took a deus ex machina approach to clean up. That is, it was highly structured with lots of analyses, and more analyses, and analyses on top of analyses. Hence, while a lot of work went into formulating that NCP the result was to underscore my point, that it took a lot of time before dirt started to fly on sites and actual construction was commenced. And I have to say that in many cases this is appropriate because we simply didn't know what we were going to find in terms of the degree of hazard of the contaminant when we went out there.

Mr. LEVITAS. This is my last question, then I will recognize the members.

The problems that you have identified, Mr. Cannon, in this report, and you have identified problems, and we are all expecting that that phase of Janus looking to the future won't see these problems, but we need to look back in order to avoid history repeating itself, since it appears, at least from your report, that these problems were a matter of policy. My question is, Who was responsible for that flawed policy? At what levels of management within the Agency? I realize that is embarrassing—not necessarily embarrassing; it is an awkward question. But I think we have got to know.

Mr. CANNON. I don't think it is an embarrassing question, although I am naturally a little bit sensitive, since I think I am the only official in the Agency with "policy" in his title. But that is not to say that all policy emanates from that point. I think it is a hard question to answer for another reason. And that is, it is not clear how policy becomes policy.

You referred earlier in talking about the report to a top-down versus a bottom-up approach. Some things, because of the way a statute is written and interpreted by lots of different people, by the lawyers who implement it, by the program managers who write the regulations, it is just hard to say how the policy emerged. I am not going to not answer your question, however.

Mr. LEVITAS. I was going to get back to it.

Mr. CANNON. With respect to the strong priority on prudent fund management, I am not clear exactly how that policy developed as a policy. In fact, I am not even sure I would characterize it as a policy. But the sense certainly was that, in at least two respects. First, there was the concern, as you are aware, that some didn't want what was called the son of Superfund. So there was that problem. My own sense is that that faded at some point, though I couldn't tell you exactly when, that this money wasn't enough to do even what we had staked out in the first go-round.

Mr. KINGHORN. If I may for a minute, on the prudent fund management question, I would like to at least give you my impressions of an issue we discussed last summer. I think it is important for your deliberations because I think in my reading of this report—and I frankly have only read it about twice—the terminology, prudent fund management, may be overused and probably could give

you a wrong impression, at least from my perspective as I remember what went on last summer.

During last summer's budget hearings with the Administrator and Assistant Administrators, we raised a question which was really a long-term question. We were working with the 1984 budget development process, but we were really looking at 1985 and 1986 and looking at what might happen down the line as we committed to both immediate cleanup actions and remedial efforts.

My analysis from my own staff indicated, in conjunction with the program managers, that at the current rate and estimates which were then, now a year ago, probably pretty rough, it was very likely that we could be starting work on certain sites, not in this year, but in late 1984, 1985, that with the current size of the fund, you would run out of money unless some money was reauthorized, or interest payments increased, or in other words, unless some additional income came in.

We raised that issue not simply because people were afraid of a son of Superfund, because I think Joe was right. Even then we realized there were a lot more sites out there than any amount of money could clean up ultimately, but to make sure the Administrator was aware where she might be in a position in the next 2 years where she could be committing to a site, in any site with a removal activity, and if that site went to remedial, she could run out of money.

I think that is, to me, the broader question of where the term "prudent fund management" came in. In my recollection and in my position, although I have not been involved in site-by-site decisionmaking, during the summer budget discussions and during any of the discussions I remember having with the Administrator, with Joe or anyone else, I don't believe any question of running out of money was a specific question at any site where action was going to be taken.

So I don't want you to assume the question of prudent fund management is inconsistent. I think it is important to have good fund management being comptroller of an agency.

Mr. LEVITAS. We all agree on that.

Mr. KINGHORN. I don't think that that question in terms of immediacy of where we are now in 1983 and where we were last summer was a major one.

Mr. LEVITAS. It would seem to me that an Administrator of that Agency, getting the type of advice that you were providing at that point, could have taken the position, "Yes, I see what the problem is. And what I need to do is go up to Congress right now and say we don't have enough money to do the job. And you ought to know that. If you want us to do this job, we can do it, but we can't do it with the resources we now have."

That might have been a more appropriate response, given the mission of the Agency. In fact, EPA has already gotten a great deal of experience of that type of funding approach in a less health-threatening area but still an important one, in the Construction Grants Program; the segmented funding.

Mr. KINGHORN. I think, Mr. Chairman, you are correct. But I think that is a matter probably of timing. Last summer, you have to really look at where the agency was. We really only had at that

point really less than a full year of experience in any fiscal year. I think one of the biggest questions we had was on pricing. How do you price out for the next 6 years the average site costs? In addition, in the last year, estimates of revenues into the fund, Treasury increased them around $300 million. So I don't think at that point last summer, we came to an agreement generally that that question was not one that we had to either answer or address in 1984 and probably would address, and will probably address this summer.

Mr. LEVITAS. Then let me get back to Mr. Cannon, if I may, to your response. Was it the Administrator, Deputy Administrator, your office, Rita Lavelle, Bob Perry? Where was the primary thrust coming from?

Mr. CANNON. I would have to say the primary thrust, although I don't want to attach too many caveats to it, what Mr. Kinghorn said is correct. We were still in the process of developing what we were going to be doing. Basically, you are looking at a program that was in its start-up phases. A lot of these things were becoming apparent. There is a report due, not this report, but another due to Congress on that very issue, timed to come well before the ending of the fund in which we anticipate addressing the very question.

So it wasn't a question people were trying to avoid answering. It is just that it wasn't ripe at the time. As far as where the policy was developed, I have to give you my own perspective, that a lot was internal to the Office of Solid Waste and Emergency Response.

Mr. LEVITAS. That is Rita Lavelle's office.

Mr. CANNON. Right.

Mr. LEVITAS. OK.

Mr. CANNON. One of the problems that led to this report was that we weren't getting the kind of information, and the Administrator didn't feel that she was getting the kind of information that she thought she needed from Rita. And in fact, I see this report as just the natural response to that, to go in and find out, start flushing out and forming, raising some of these issues which you have characterized as problems, and which we have already begun to respond to.

It is kind of a health process. But as far as where the policy developed, I can't remember a memo that would say, "This is the policy that was sent from the Administrator to the Assistant Administrator, from Mrs. Burford to Mrs. Lavelle."

Mr. LEVITAS. If you would furnish us, if you have it here today, fine, if not, furnish us for the record a copy of the letter from Mrs. Burford to Rita Lavelle that you described earlier that related to this study. Also, that will without objection be made part of the record.

[The letter referred to follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 4 1983

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: First Quarter FY 1983 Accountability Results

TO: Rita M. Lavelle
Assistant Administrator
for Solid Waste and Emergency Response

I have reviewed the results of OSWER's first quarter FY 83 performance and continue to be impressed with the progress you are making in RCRA State authorizations. Furthermore, your performance with respect to Superfund removals and Superfund enforcement activities was also very strong over the previous quarter.

I am concerned, however, that progress on Superfund remedial activities apparently has slowed down. As you know, it is most important that you consistently meet your remedial activities targets so that work at the sites can be initiated as soon as possible. This is a crucial program performance measure and I expect to see improved results by the end of the second quarter.

I understand there were a number of problems with the Hazardous Waste Data Management System (HWDMS), resulting in no reporting at all for RCRA compliance and very sketchy data on Regional RCRA permitting activities. I have asked Lew Crampton to work with you to resolve these problems in time for the second quarter report. I am sure we both agree that it is important I receive accurate and complete data in these areas each quarter. The absence of any backup systems for collecting this important information in the event HWDMS fails is of particular concern to me.

I also understand the requested Regional targets for RCRA permitting and RCRA inspections were not negotiated between your office and the Regional Administrators in time for my first quarter report. Please make every effort to insure these targets are established and agreed upon with the Regional Administrators as soon as possible.

As you know, I am most anxious to have information on the environmental results of each of the Agency's programs. I expect to see as part of your second quarter report those indicators for which data are currently available. Please provide my staff with a schedule for identifying and reporting against additional environmental indicators during the next quarter.

The hazardous waste program is certainly one of the most difficult program areas in the Agency to administer and I know you and your staff are working extremely hard. Please let me know if there is anything I can do to assist you in reaching our mutual objectives. It is important that we establish a record of accomplishment in this program for which we can all take pride.

Anne M. Gorsuch

I am very concerned about OSWER's accountability results this quarter and do not want to wait until the end of the second quarter for a progress report.

I want you to submit the ~~following~~ following items to CMSE no later than 3/1:

- FY'83 RCRA permitting and inspection targets with RA concurrences
- Progress in obligations for remedial actions
- FY'83 targets for clean ups (full implementation of selected engineering designs)
- RCRA enforcement data — lack of RCRA enforcement data is intolerable. Failure of HWDMS is no excuse.

Mr. LEVITAS. Also, I will make part of the record at this point without objection a letter from me to Mr. Ruckelshaus dated May 24, 1983, with respect to these hearings.

[The letter referred to follows:]

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Committee on Public Works and Transportation
U.S. House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515
TELEPHONE: AREA CODE 202, 225-4472
B-376 Rayburn Building
Washington, D. C. 20515
May 24, 1983

Honorable William D. Ruckelshaus
Administrator
U. S. Environmental Protection Agency
401 M Street, S. W.
Washington, D. C. 20460

Dear Mr. Ruckelshaus:

I am writing to let you know that the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation will be continuing with its inquiry into the problem of hazardous waste contamination of water resources with the holding of a public hearing on Thursday, May 26, 1983. The primary purpose of this hearing is to review the findings and recommendations set out in the recent report prepared by the EPA Office of Policy and Resource Management (OPRM), entitled "Management Review of OSWER Programs."

As you probably know by now, that report points out that the Superfund and RCRA hazardous waste programs have been subject to a number of management constraints and organizational deficiencies that have delayed the cleanup of abandoned toxic waste dumps and undermined the agency's ability to take effective and expeditious enforcement actions.

While some changes in the policies guiding these programs have already been initiated, there are indications that additional changes in the statutes involved, particularly the Superfund law, and EPA's organizational structure may be necessary.

It will be helpful to the Subcommittee's proceedings if those involved in the development of this report, along with the key agency officials responsible for managing the various program and enforcement activities discussed in the OPRM review could be present during our review of this study so that we may have the benefit of their views and experiences. Accordingly, I would appreciate your assistance in arranging for the following individuals to appear before the Subcommittee this Thursday:

-- Joseph A. Cannon, Associate Administrator for Policy and Resource Management;

-- Lewis Crampton, Director, Office of Management Systems Division, Office of Policy and Resource Management;

-- Gene A. Lucero, Director, Office of Waste Programs Enforcement, Office of Solid Waste and Emergency Response;

-- William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response, Office of Solid Waste and Emergency Response;

-- Michael A. Brown, Director, Office of Enforcement Counsel, Office of Legal and Enforcement Counsel;

-- C. Morgan Kinghorn, Comptroller, Office of the Comptroller.

It is planned that the hearing will begin at 9:30 a.m. in Room 2167 of the Rayburn Building. Each of the above mentioned individuals has been alerted previously that we would be seeking their participation. However, should you or any of the above listed individuals wish to have others on their staffs accompany them, that is acceptable. Also, it is requested that any of the witnesses who intend to make opening statements provide the subcommittee with a few copies of that statement by the close of business on Wednesday, May 25, and that 50 to 75 copies of the statement be provided at the time of the hearing.

I also want to take this opportunity to again express my support of your efforts to restore confidence in the Environmental Protection Agency. With your help and cooperation, I believe our oversight will be able to contribute to accomplishing not only that goal, but a cleaner environment for this nation.

With best wishes, I am

Very truly yours,

Elliott H. Levitas
Chairman
Subcommittee on
Investigations and Oversight

EHL/amg/49

Mr. LEVITAS. Thank you.

Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

The report certainly raises a number of questions that are of interest to the subcommittee. One that particularly concerns me is on page 8 and page 10 of the report. We are being told that at approximately half of the priority sites, there is the potential threat of fire, explosion or other direct release. I believe that, in a press release dated, I think it was May 13, Mr. Thomas made reference to the fact that the 419 priority sites were being reevaluated so as to determine some priority. I suspect that this may have had something to do with that. This concerns me.

Could you tell us specifically what is being done to identify those sites where such serious threats were? We have had cases of explosions at dumpsites that could have very serious consequences. I am deeply concerned about these threats.

Mr. CANNON. I have to admit, I am not competent to answer the question. I know that the process is going on, as Mr. Thomas mentioned. I am not sure that it was just in response to this report, although it was in connection with the report. But I can't elaborate. I don't know exactly the process. I know that there is some thought that a number of the sites could be the subject of removal, as opposed to remedial actions.

Mr. MOLINARI. Where did you get the information that approximately half the sites fit into that category?

Mr. CANNON. Probably from interviewing regional people in the regions and in the program. But I can't specify exactly. Lew?

Mr. CRAMPTON. That is correct, on the basis of interviews with program staff. Now, I have to take responsibility for the words "fire and explosion" here. That is not quite a correct characterization of the potential threat. I wish we had left fire and explosion out now because that term really refers to the pathway of a possible direct release for those sites. What I really mean is that a threat of direct release exists at half the NPL sites which could be effectively addressed by an immediate removal action now. This was set forth in the context of trying to help the program move toward using the emergency removal component in the Superfund Program, which in our estimation was relatively ignored as the program was focused almost exclusively on remedial actions.

We were just saying if you do triage out there, about half the sites could be dealt with by removal, even though——

Mr. MOLINARI. Are you saying the question of the threat of potential fire and explosion is not as real as this report suggests?

Mr. CRAMPTON. That is correct. I am saying that.

Mr. MOLINARI. I see. Before we leave the subject Do you have any idea how many sites did blow up or were subject to fires in the investigation?

Mr. CRAMPTON. I don't know. We learned this in extensive discussions with people in the regions, and with people at headquarters, too. And it was stated generally. What they were trying to tell us was, "We think that the removal program hasn't been utilized enough and we know that there are direct threats or potential threats that could be addressed by the program out there, if only we could turn the program in that direction."

As to how many sites, we never got a specific count. I am passing on what I was told.

Mr. MOLINARI. The thought that comes to my mind is, there is reference in here to organized crime and their involvement in the industry in dealing with storage and disposal of hazardous and toxic waste. And, indeed, there have been some fires set at some of the sites that have been labeled as suspicious and maybe an attempt to cover up what had been there.

Is anybody prepared on this panel to say what kind of threat would be posed to the people in the nearby vicinity if an explosion occurred, depending upon what chemicals might be stored there? I am thinking about the chemical control fire in Elizabeth that blew up. I know there was deep concern on the part of the officials as to the clouds that were coming out of there and what those clouds might do to nearby people.

I was around the area at that time and I saw the fire occur. I am concerned because we have had a number of them. I don't know if you can address that.

Mr. CANNON. I don't think this panel can adequately address that.

Mr. MOLINARI. Let me move on then.

Mr. CRAMPTON. Congressman, I am sorry. And the question you asked as to what is going on now to reclassify these sites, we are really not——

Mr. MOLINARI. I understand.

Mr. CRAMPTON. It would be the next group of people who are scheduled to testify who can give you that information.

Mr. MOLINARI. You make reference in the report to the fact that you may be delegating more authority as a matter of policy to the regions. Yet, we have had a great deal of testimony before the subcommittee as to problems that were continually occurring between at least some of the regions, headquarters, and EPA.

I have received some documents, some of which I read into the record, where headquarters was raising serious questions about the propriety of actions taken by some of the regional officials. And now there is a recommendation that we move in a direction of giving greater authority to the regional administrators and enforcement officers.

Do you foresee any continuance of the same kind of a problem, that their actions may be subject to questions? Is it possible that their actions might interfere with the ability of the Government to pursue recovery costs?

Mr. CANNON. Well, we think there needs to be some greater delegation, out to the regions, a view that has already been embraced in the program. I am not familiar with the correspondence back and forth on the problems the regions may have had. But I think, I don't have the language right in front of me, but in addition to just delegation, we weren't suggesting mere delegation, but also development of some kind of consistent guidance from headquarters to the regions to if not eliminate, at least reduce the number of problems of implementation.

The work is done out in the regions. So that is the genesis of our concern, that you delegate authority where the action was, do so in

the framework of some guidance. As I say, Mr. Thomas has already begun that process.

Mr. MOLINARI. As a matter of policy, are there any recommendations that you would have in mind with respect to monitoring the activities of the regional people? There are 10 regions and my experience has been that some of the regions are pretty good, while others are not good at all.

Mr. CANNON. Well, the regions report to the program office, Assistant Administrator in the headquarters. There are inconsistencies from time to time between regions. But they are still part of EPA. One of the ways to enhance regional performance is to develop uniform guidance.

Mr. CRAMPTON. I think one of the recommendations we made with respect to delegation took into account the fact that it would take Superfund Program staff some time to get guidance out and develop a management control system internal to OSWER that would make sure that what the regions were doing was nationaliy consistent. The fact of the matter is, as other agencies have learned to their sorrow, you cannot run a huge construction program from the banks of the Potomac in Washington.

HUD, FEMA, and other agencies have basically decentralized all of those responsibilities down to action levels. We are still running a highly centralized program. If you are concerned about responsiveness, Congressman, then having a centrist program management appproach is not the best way to get responsiveness, although it is a good way to ensure that the program is controlled.

Mr. MOLINARI. Isn't that because certain individuals like Mr. Perry insisted on having total overview of the enforcement actions at every region before a remedial action could take place?

Mr. CRAMPTON. That also was a problem. The problem of getting enforcement releases, for remedial construction actions which amounted to a de facto concurrence from the Office of Legal and Enforcement Counsel. But again, that doesn't overcome, I think, the need to ensure that Superfund become an operationally based program. And Mr. Thomas has recognized that in terms of the first two or three initiatives that he has already started to delegate certain operational responsibilities to regional managers.

Mr. KINGHORN. Mr. Molinari, if I can add something that was just brought up in the Construction Grants Program.

Mr. MOLINARI. Certainly.

Mr. KINGHORN. One thing that is in the report, which, though I think it has some appropriate similarities, I think it would be dangerous to assume that this program is similar in some important respects to the Construction Grants Program, because it is not, in my mind. Again from my responsibilities as comptroller, a construction grant program is a grant program entirely. And in addition, the distribution system is quite different. It is a formula grant program.

So we distribute those funds to the regional offices. They are distributed by State, by statute. Whereas this program obviously does not have those similarities. So I think if you try to apply the Construction Grants Program to the daily management of this program, you should be very, very careful because of the basic distribution differences of the money.

Mr. MOLINARI. One other area I would like to move on to is the reference in here to a possible waiver or deferral of the 10-percent matching fund on the part of the States. I do know that the 10-percent requirement has posed a serious problem where some States haven't had the capabilities of coming up with their share of the money upfront. But I am wondering, if you actually waived it, if the Superfund law was changed so that there was a total waiver, might this not lead to the States increasing their applications for Superfund assistance?

Mr. CRAMPTON. Yes, it might. And we are not waiving the big dollars, that is, the dollars that it would take to do the construction program. We are only waiving the dollars that would go into the upfront planning, and deferring those until it is time to pay the whole bill, that is, come up with the 10-percent——

Mr. MOLINARI. Wasn't there some consideration mentioned to waiving it altogether?

Mr. CRAMPTON. Mr. Thomas would be better qualified to talk about that.

Mr. MOLINARI. All right.

Mr. CRAMPTON. But basically, there was never any consideration being given to waiving the 10-percent cost share for construction. And that is required by the statute anyway.

Mr. CANNON. Yes.

Mr. CRAMPTON. But if you are interested in responsiveness, one of the biggest barriers to our getting out onsite quickly with construction activities was the States' inability to come up with their 10-percent share for planning, which is a fairly small number, but still significant to them.

Mr. MOLINARI. One last question to this panel.

Mr. Kinghorn, you mentioned a question which is very significant, and that is the amount of money in the Superfund, and the fact that it may or may not be enough. We have had testimony that, I don't recall which witness it was, but the fund in a ballpark figure, there might be enough in it to cover 100 sites.

How do you deal with that issue when we have 419 sites listed at the present time with that list increasing from time to time? And as you are developing new priorities in looking over the 419 you have now, how is that problem going to be addressed? Do you have any recommendations?

Mr. KINGHORN. General recommendations probably would stem from policy choices that the new Assistant Administrator or Administrator would make. I think generically in trying to estimate the resources of the fund, as I indicated before, since about this time last year, I think Treasury has estimated that the total value of the fund, including Federal contributions, taxes, recoveries which are very, very difficult to estimate, and interest on the money sitting in the fund, have gone up by about $300 million, from $1.6 billion to $1.9 billion. So that number keeps shifting.

The base which you use, whether it is the 419 or the old 11,000 number, clearly in terms of the current Federal fund, you do not have enough money in there given the current average site cost. That also shifts. I think the issue is related to recoveries, what kind of recoveries you are going to get. I think that is probably a

long-term issue. Some of these cases in big recoveries are going to take maybe a decade to resolve.

The other issue is State share, and State involvement, 10 percent share. But clearly I think the number we have been focusing on is 170 sites, at least the current policy, 170 sites with Federal cleanup money and then another 170 sites perhaps through enforcement actions. But clearly as we go along here and the numbers get firmer we are going to be addressing them. As Mr. Cannon said, there is a report that is due, sufficiently prior to the ending of the fund, that will have to deal with those issues. But the numbers shift constantly. It is a new program.

You can have one site that may cost $33 million, that throws you off entirely in terms of any estimates over a 5- or 6-year period. But I think the major decisions will be policy choices, both by the administration and by the Congress, that will affect that number.

Mr. MOLINARI. Thank you. I have no further questions of the panel, Mr. Chairman.

Mr. LEVITAS. Thank you.

Mr. Rowland.

Mr. ROWLAND. Thank you, Mr. Chairman.

Mr. Kinghorn, I believe you stated a few minutes ago that there were not any similarities between construction funds and the Superfund implementation.

Mr. KINGHORN. I think there are similarities in the management. I am just saying that to basically say to delegate further the program, which in my opinion probably makes a great deal of sense, I think you have to do so carefully from a funding management standpoint, because it is not simply a grant program. You have a lot of other funding mechanisms available. You have cooperative agreements which is about the closest you can get to a grant program.

There is a much different Federal involvement in this program in terms of what we can really do as managers. It is not a delegated program like construction grants is, for instance. Most importantly, the ultimate distribution of the funds is very specific in construction grants. Each state gets a statutory amount. That is not the case in Superfund, which means that there is a whole different decision mechanism to decide who gets those funds, and that is the priority list essentially.

But in terms of distribution of money and basic management of the program, there are different similarities. It is not currently a program we intend to delegate as we do construction grants to the States. We try to involve the States but in that essence, it is different. In fact, the bottom line, it is a construction program, I guess, in its basic sense in terms of ultimately using bulldozers and other cleanup equipment. That is very similar to the Construction Grants Program, and it is a construction effort. But in terms of the mechanisms, all I am suggesting is both mechanically when we expand the delegation, we are going to have to be a little bit careful as we determine how we distribute funds, in my very narrow world in terms of allowances, how we distribute those funds to the regional offices.

If you delegate, as this report recommends, up to a million dollars authority to a region, we have to make sure that we have the

finance and funding mechanism to make sure that is done properly and adequately. That is not to say that there are not similarities in the construction phase of the program.

Mr. CRAMPTON. May I add something, Congressman, please.

Mr. ROWLAND. Yes.

Mr. CRAMPTON. I agree with the comptroller's comments with respect to the need for being sure that what gets done gets done carefully. Certainly there is a difference between a grant program which is construction grants and direct implementation of a cooperative agreement program. However, I think there is a confusion between the term "delegation" and the term "oversight". What we are talking about in our report on Superfund is oversight.

On page 13, we are very specific about what kind of long-term oversight program ought to be put into effect for the Superfund Program. It happens these characteristics are also a feature of the Construction Grants Program. They include full authority for the regions to make decisions on projects up to certain dollar limits, and headquarters' concurrence or approval for major complex construction projects above those limits. That is, indeed, an appropriate and effective approach to managing a field implementation program such as Superfund.

Quarterly regional reporting on obligations and outlays against established targets, a specially directed audit program run by the Office of the Inspector General and midyear and year-end visits to the regions by headquarters staff to review performance. Those are all features of the Construction Grants Program which does its oversight job fairly well, I think.

Mr. ROWLAND. I was interested in an excerpt from page 11 of this report that stated, "It is virtually an impossible task to supervise every detail of a large and complex scattered site construction program from Washington, DC. Other Federal agencies have learned this lesson and, for that matter, so has EPA.

"In retrospect, it is hard to understand why a more conscientious effort wasn't made to apply the lessons learned from the Construction Grants Program directed to Superfund." There are many similarities. I was concerned about a contradiction, the statement made to the verbiage in this report.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you.

Congresswoman Johnson.

Mrs. JOHNSON. Thank you very much, Mr. Chairman. There are a couple of questions that I have.

First of all, you mention in your report that it was stimulated by Mrs. Burford's sense that things were not going well and that in your January 31 meeting, Mrs. Burford was indeed very distressed. What I would like to hear is your comment on the testimony that we in this committee have received over the last months from Rita Lavelle, Mr. Perry, and others, that there was a lot of conflict between the legal arm of the agency and Lavelle's shop. And that, indeed, there was a lot of frustration on Lavelle's part that the policy issue of litigation versus negotiation wasn't being dealt with; that nobody seemed to be hearing.

The image that I carried away was that at certain levels in EPA, and I hear that again in the report, from the comments of the re-

gional management people, that indeed, everybody felt the enormous tension of the paralysis that resulted from the conflicts that Ms. Lavelle, Mr. Perry, and others have referred to and that you referred to. My impression is that those conflicts were so clear and dominant in agency life that I don't understand why they didn't result in action at the head of the department sooner. I would like to know why no action was taken until the end of January, especially in light of Ms. Lavelle's specific testimony that she had tried to get Ms. Burford to respond or to schedule a meeting with her.

Why did the problem drag on for such a long period of time?

Mr. CANNON. Well, I don't know all the answers.

Mr. LEVITAS. Excuse me, Mr. Cannon. Before you respond, that is a very good question. In order to adequately respond, it is going to take more than a brief answer, I would imagine. There is a vote in process. It is the second bells. We are getting another opportunity now to vote on the MX missile decision. We haven't had enough chances to do that, so they wanted to assure us this one additional one before the Memorial Day recess. We will stand in recess and immediately convene following the vote.

The subcommittee will stand in recess for 10 minutes.

[Brief recess.]

Mr. ROWLAND [presiding]. We can start now, if the panel will be seated.

Mrs. Johnson.

Mrs. JOHNSON. Thank you. I believe there is no need to restate my question.

Mr. CANNON. No; let me restate it, though, just to make sure I am answering the right question. The question is, why, if there had been all these concerns and troubles boiling over sometime before the end of January, was it only at the end of January that the Administrator finally asked for this study.

Mrs. JOHNSON. Yes.

Mr. CANNON. The answer to the question is, I think, that many things were happening at the Agency. I know the impression has been given that the disputes or concerns between the Office of Legal and Enforcement Counsel and the Office of Solid Waste and Emergency Response were somehow dominant. I have the impression that they weren't dominant, but a continuing kind of a problem. By the time the Administrator finally received the accountability report, which measured the results of the first quarter, going back to October, November, and December, and the report had been assimilated and the preparation completed for her briefing it was the end of January.

This isn't to say this is the first time she had frustrations, but it was the straw that broke the camel's back in triggering the response that it did trigger, and she just said, well, let's just get to the bottom of this.

Another important thing to point out is that the accountability system is a management tool that measures progress toward commitments. That is where problems may be most starkly apparent, as opposed to what could be perceived of as just a turf battle in a bureaucratic sense between two particular offices, which would be a continuing source of concern, but not something that is brought out in the sharp relief of black and white numbers.

Mrs. JOHNSON. Was this the first accountability report?

Mr. CANNON. This was the first report of the fiscal year, however. Of course, the report before that would have been for the fourth quarter of fiscal year 1982. And then there was, of course, a final report for the year. But the problems hadn't become quite as apparent at those stages because, as I say, this was basically in the startup phase.

From our perspective, we were being much more flexible in what we were requesting from the program because of the startup character of this effort. Plus, we were receiving assurances that things were fine, and that systems were being put into place. It wasn't until the first quarter that it became quite apparent. And then at that point, the Administrator said, "I can't wait until the end of the fiscal year or even the end of the next accountability report. I want something done right now."

Mrs. JOHNSON. Thank you.

Along the same lines, then, when you undertook this report, in the course of your evaluation, were there accomplishments of the Agency that you can point to? In other words, recognizing this is a new program, the complexities of the legislation, inherent contradictions within the legislation, the newness of the legal challenges, the newness of the environmental issues and all of those problems which have been well documented before this committee and which, as a legislator who has been involved in oversight, I really do respect, and respect the time that they take to address and the difficulties that they create; recognizing the nature of the preceding year, as you did this review, did you also make an analysis of what had been in fact accomplished, as well as what needed yet to be accomplished, or changes to be made?

Were there things that, for example, Rita Lavelle had actually done that would give her a reason to believe that progress had been made?

Mr. CANNON. I can't——

Mrs. JOHNSON. I withdraw the second part of my statement because I really don't want it to be haggled up with her. What I am more interested in, is that as you did your management study of what had happened in implementing very complex legislation, were there things that you could see had been accomplished?

Mr. CANNON. Sure. We said there were things that had been accomplished. The program hadn't been a total failure. There had been progress made, as Mr. Crampton mentioned, in the development of the national contingency plan. This report is twofold. It also measured and examined the RCRA Program, and the final regulatory package had been put in place implementing those regulations.

Lew, why don't you mention some of the accomplishments.

Mr. CRAMPTON. Well, the accountability system report that triggered this was the fifth accountability system report that Mrs. Gorsuch had received. The first two dealt specifically with the Superfund Program and tracking outputs there. The rest of them were subsumed into the general accountability system report. You should know that we have supplied copies of those reports to the committee staff. And those five accountability system reports document the fact that the Superfund Program was accomplishing a

number of important objectives, including the establishment of the national priority list.

Generally, if you want to look at it this way, the overall framework for the operation of Superfund was established. On page 2 of the report we are discussing here today, we do make that point. And for about two pages, we go on with some detailed accomplishments that OSWER has achieved in the first 1½ years of the Superfund Program's operation. So we acknowledge the fact that there were significant accomplishments achieved, that the program was tremendously complex to operate, and that there were a lot of background factors that served to inhibit people in the program from achieving their goal—so that what they accomplished was achieved against a lot of background noise as well.

Mrs. JOHNSON. Then in your recommendations, you recommend developing an agenda for action by developing a new set of management options which you anticipate doing over the next 2 years. With the amount of work that has been done to this point, with the accomplishments of the past as well as a better understanding of the problems of the past, why do you anticipate that it will take 2 years?

Mr. CRAMPTON. I don't think it will take 2 years to do everything. There are already significant accomplishments in hand. What we were trying to do was, provide some impetus for the program to turn itself around and redirect it toward a more responsive mode. And as we were doing this, I think it is important to point out that Lee Thomas, on his own, was talking to people, and taking actions on his own that would do this.

In fact, as we talked back and forth with people in the Superfund and RCRA Programs, we found that some of our recommendations were being initiated by Mr. Thomas and, as their people spoke with us, we were providing new insights as well, as a result, so there was a kind of symbiosis or serendipity going on as all this was developing. Indeed, our office can't take full credit for this report, because there are people in the Superfund Program who contributed to it, including Lee Thomas. And that is important to know.

But, in fact, the major areas that we felt needed redirection, were, first of all, that management really does need to focus on its underutilized removal program component and use it as a means of quickly getting out to sites, where you still have drums lying around or lagoons filled up or storage tanks and building debris creating hazards or potential hazard that are visible to all. Second, we also felt that the program was being too centrally managed and not sufficiently delegated to our regional offices.

There certainly was reasons not to delegate the program to the regions at the very outset of activities. But by the time of our report, there had been, in our opinion at least, a more than sufficient amount of operating experience with Superfund so that it could be delegated according to what I think is an appropriate schedule set forth in here.

I believe, management can follow that schedule and "win" in terms of making Superfund more responsive as well as a more effective managed program.

Mrs. JOHNSON. So while the statement implies that the agenda for action and new set of management options is to be developed

over 2 years, you really don't anticipate it would take 2 years? In fact, I would assume management options are moving rapidly along.

Mr. CRAMPTON. That is right.

Mrs. JOHNSON. What you are really talking about is implementing them.

Mr. CRAMPTON. That is right.

Mrs. JOHNSON. Thank you. I won't prolong this because I know we have another panel, but I do want to thank you for what I consider very good testimony on a subject that we have spent a lot of time on in this committee; and that is the complex relationship between actions prudence, and careful management of limited resources. The conflict in the law between cleanup and negotiations has really made much clearer the fact that you cannot separate immediate cleanup from the long-range ability to recoup costs and litigation against the generators.

I think the complex relationship between those factors is the reality. And I think your comments this morning were very enlightening and very helpful.

Thank you very much.

Dr. ROWLAND. Thank you, Mrs. Johnson. Without objection, I would like to have the set of management accountability letters mentioned a moment ago also included in the record.

[The information referred to follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 25 1983

OFFICE OF
POLICY AND RESOURCE MANAGEMENT

MEMORANDUM

SUBJECT: Agency Management and Rita Lavelle

FROM: Cynthia C. Kelly
Director, Management Systems Division

TO: Joseph A. Cannon
Associate Administrator
for Policy and Resource Management

THRU: Lewis S. W. Crampton
Director, Management Systems
and Evaluation

This is in response to your request for documents indicating Rita Lavelle's participation in the Administrator's Management Accountability System and environmental results initiative. Joan LaRock said you wanted us to pull these together after Rita Lavelle testified that EPA suffered from "nonmanagement."

1. Letters in Response to Accountability System Reports.

There are five letters from the Administrator to Chris Capper and Rita Lavelle for OSWER's performance in FY 82 and the first quarter FY 83. Among the things to note are the request by the Administrator on August 3, 1982, to develop a RCRA enforcement tracking system. As of February 4, 1983, the Administrator had not received RCRA enforcement data for first quarter FY 83 because of the failure of the program to implement an effective tracking system or even respond with numbers collected manually. The fourth quarter 1982 report indicates concern with problems over Superfund's fiscal management system and slow progress on Superfund cleanup. In the first quarter 1983 report, the program fell far short of its targets for remedial activities. The number of remedial investigations/field studies (4) was down dramatically from the preceding quarter (14).

2. November 7, 1982, Memo Transmitting 1983 Management Accountability Measures.

Rita Lavelle transmitted the commitments for OSWER for FY 83 and underlined her support to the Administrator to continue to improve the usefulness and effectiveness of the Management Accountability System.

3. November 8, 1982, Results of the MAS Survey.

We included your memo to the Administrator capturing the results of our survey on the effectiveness of the MAS. Originally, you were scheduled to meet with Rita Lavelle but that meeting fell through. We were able to meet with all three of her office directors (Bill Hedeman, John Skinner, and Gene Lucero). Rita was clearly aware of the Administrator's management system and her staff participated in shaping it.

4. January 21, 1983, First Quarter Reporting for FY 83 MAS.

This is OSWER's submission for the first quarter. As Rita Lavelle comments, "To our dismay, some of the requested data is not yet available." In particular, there was no RCRA compliance data and other measures were included without the Regional Administrators' concurrence.

5. February 9, 1983, Response to the Draft of the Administrator's Guidance.

While this response was signed by Barry Korb after Rita left, the draft Administrator's Guidance was sent to Rita and her staff at OSWER in mid-January. She was well aware of the initiative to provide Operating and Budget Year Guidance for FY 84 and 85.

6. March 30, 1982, Response to Managing for Environmental Results Initiative.

In this memo Rita Lavelle expresses her support for the initiative and indicates her interest in pursuing environmental results indicators.

7. Memo from Rita Lavelle Committing to Two Environmental Indicators for the MAS.

In this memo, Rita Lavelle committed her staff to reporting against two environmental indicators, one for Superfund (p. 2) and one for RCRA (p. 4). As indicated in her submission for the first quarter FY 83, OSWER did not report against either indicator. (See Item 4.)

Attachments

cc:
Ron Brand
Joan LaRock

MEMORANDUM

SUBJECT: OSWER's Accountability System Results

TO: Chris Capper
Assistant Administrator
Office of Solid Waste and Emergency Response

As you know, I am very concerned that we accelerate implementation of the Superfund and Resource Conservation and Recovery Act (RCRA) programs. I commend you and your staff for the hard work that you have devoted to these programs in the past several months and appreciate the progress that you have been making. Nonetheless, meeting our FY 1982 program targets continues to constitute a national challenge for our entire organization.

Most importantly, with the completion of the initial priority list for 115 sites, the forthcoming Interagency Agreement with the Corps of Engineers, and delegation of authority to you for the majority of program decisions, I now expect to see considerable progress on implementing Superfund in the next three quarters. For my part, I will continue to press the Office of Management and Budget for approval of the National Contingency Plan, review of cost-sharing guidance to States, resolution of the interagency budget, and other pending issues. I will be following your progress closely utilizing the new Superfund tracking system.

As I emphasized at the meeting with the Regional Administrators on January 19, 1982, I am most concerned that we accelerate activity to address the 115 priority sites. I expect that you will provide me with regular status reports concerning actions that each Region has taken at these sites. Also, I want you to ensure that we are conducting as many preliminary assessments, site inspections and site investigations as possible to evaluate other sites that may be presenting a serious problem. My comments to the Regional Administrators reinforce these concerns but I will hold you and your staff accountable as national program managers for achieving our national targets.

With respect to the initial reports on implementation of RCRA, I am pleased with the overall progress that the we have made in the number of States that have accepted authorization for Phase I. It is critical that we achieve our targets for full authorization this year (particularly in Regions II, V, and IX). I will be following progress closely; please keep me apprised.

Anne M. Gorsuch

QC Item 1(B)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Second Quarter FY82

APR 30 1982

THE ADMINISTRATOR

MEMORANDUM

TO: Rita Lavelle
Assistant Administrator
for Solid Waste and Emergency Response

SUBJECT: OSWER's Accountability System Results for RCRA

I have just reviewed the results of the second quarter management accountability report and am pleased with your progress in Phase I delegation and compliance monitoring of RCRA facilities. I note that there are 28 states authorized for Phase I, with an additional 10 expected by the end of FY 1982. With respect to compliance monitoring, I note that we are meeting or exceeding our Regional and National compliance monitoring targets.

I want to see your program place major emphasis on issuance of the RCRA regulations, RCRA enforcement, and Phase II authorization over the remainder of this fiscal year.

- Issuance of Regulations. I understand that your regulatory schedule has slipped, partly due to contracting difficulties beyond your control. Once a schedule is set, we must meet our deadlines.

- RCRA Enforcement. Although the reorganization of enforcement has caused some confusion about functional roles, I understand that progress has been made in determining your Office's appropriate responsibilities. It is important that you redouble your efforts to work closely with the Regions on identifying Class I violations and issuing Class I compliance orders to ensure that effective enforcement actions are taken. Except for Region II, our performance in identifying Class I violations and issuing Compliance Orders for those violations needs a great deal of improvement.

I note that you are two months behind schedule in issuing guidance on what constitutes major and

non-major RCRA facilities and expect that you will make every effort to complete that guidance as soon as possible.

- Phase II Authorization. Two states have received authorization and twelve additional states are projected to obtain authorization. I encourage you to work closely with the Regions to ensure that this schedule is met.

I look forward to receiving the second quarter Superfund report, which I understand is on a slightly later schedule than the Management Accountability Report this quarter. Overall your performance for second quarter appears good and, I am sure, it will continue to improve during the remainder of this fiscal year.

Anne M. Gorsuch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 3 1982

THE ADMINISTRATOR

MEMORANDUM

TO: Rita Lavelle
Assistant Administrator
for Solid Waste and Emergency Response

SUBJECT: OSWER's Accountability System Results for RCRA and Superfund

I am very pleased to see the Superfund program incorporated into the overall Management Accountability Report this quarter. I find it very useful, from a management standpoint, to review all EPA program progress at one time.

In reviewing your third quarter accomplishments, I am pleased to see that excellent progress is continuing with respect to RCRA Phase I authorizations. On the other hand, although two States obtained Phase II authorization, I note that most States are not submitting draft applications for Phase II as quickly as we had hoped. RCRA authorizations must continue to be a major target for attention during the remainder of FY 82 and FY 83.

The issuance of the land disposal regulations in July was a significant accomplishment and should contribute to a large increase in Phase II authorizations. I compliment you and your staff on the excellent work that you did to develop such a high quality product.

I am also very pleased that most Regions are meeting or exceeding their targets for RCRA inspections. On the whole, however, I believe that significant RCRA enforcement activity by EPA is still limited. Also, our ability to determine and report on State activity is lacking. As I indicated last quarter, you must continue to place major emphasis on RCRA enforcement and work with Bob Perry and his staff to arrive at appropriate definitions and procedures to ensure that all active sites are in compliance with the law and our regulations. It is extremely important that you set up a tracking system that will report, on a quarterly basis, the most significant EPA and State enforcement actions (e.g., Class I violations detected and compliance orders for Class I violations issued), along with the number of hazardous waste handlers brought into compliance as a result of State or EPA actions.

With regard to Superfund, the final issuance of the National Contingency Plan on July 15 was a major accomplishment. I am pleased with your aggressive effort to obligate FY 82 remedial Superfund monies, and I note that we are on target or ahead of schedule with engineering designs and construction activities. I am concerned, however, about the slippage of remedial investigations and feasibility studies. I am also concerned about the amount of lag time between the obligation of funds and initiation of actual remedial activities, particularly for State lead projects. We must institute measures as soon as possible to assure that these activities quickly begin, once funds are obligated.

I realize that you have a tremendous workload, particularly regarding the Superfund program, and compliment you on the job that you are doing. If my Office of Policy and Resource Management can assist you in any way, please let me or Joe Cannon know.

Anne M. Gorsuch

Rita — Congressional Correspondence is showing significant slippage. It would be a shame to win the battle by good administration and lose the war with untimely Congressional interface

A.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

4th Quarter FY82

OFFICE OF
POLICY AND RESOURCE MANAGEMENT

MEMORANDUM

TO: Rita M. Lavelle
Assistant Administrator
for Solid Waste and Emergency Response

SUBJECT: OSWER's Accountability System Results for Superfund and RCRA

You are to be commended on your outstanding Superfund removal and remedial efforts during the fourth quarter. Just as important, obligations for removal activities remained within the approved budget levels during the past fiscal year. In addition, you obligated funds for remedial site activities in excess of the number projected for FY '82. I understand, however, the total amount of Superfund obligations for remedial activities fell short of our original projections by approximately $12 million.

I remain concerned about the lag time between funds obligated for remedial investigations/feasibility studies and issuance of work orders for these activities. At the end of the fourth quarter funds were obligated for 39 sites, but work orders were issued for only 19 sites. We must institute measures as soon as possible to assure that, once funds are obligated, remedial activities at the site proceed as expeditiously as possible.

I am also concerned that we develop an adequate fiscal management system for tracking Superfund monies, so we can accurately determine obligations on a quarterly basis. This will become more important as we reach September 30, 1983. As you know, if the unobligated balance in the Superfund Trust Fund exceeds $900 million on September 30, 1983, and is projected to exceed $500 million at the end of FY 84, the law provides there shall be no tax on industry after September 30, 1983.

I was most encouraged to see that we are showing significant improvement in various Superfund and RCRA enforcement activities over last quarter. Keep up the good work. Although we only collected EPA enforcement-related data in FY '82, it will be extremely important for us to show State activity in FY '83, as

States are assuming more and more enforcement responsibility. I support your efforts to secure this information from the States through grant negotiations.

Overall progress for RCRA delegations in FY '82 was excellent. Although a few States targeted for Phases I and II authorization did not reach this goal, I know your Office, the Regions and numerous States have made determined efforts in this regard and all of you will continue your hard work in FY '83.

Please pass along my personal congratulations to your staff for their superior performance in taking these two extremely difficult and complex programs closer to their ultimate goals. No other manager in the Agency has a task as difficult as yours and I want you to know that I am most pleased with your overall performance in this first year. I am confident that FY '83 will be an even better year for us.

Anne M. Gorsuch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 4 1983

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: First Quarter FY 1983 Accountability Results

TO: Rita M. Lavelle
Assistant Administrator
for Solid Waste and Emergency Response

I have reviewed the results of OSWER's first quarter FY 83 performance and continue to be impressed with the progress you are making in RCRA State authorizations. Furthermore, your performance with respect to Superfund removals and Superfund enforcement activities was also very strong over the previous quarter.

I am concerned, however, that progress on Superfund remedial activities apparently has slowed down. As you know, it is most important that you consistently meet your remedial activities targets so that work at the sites can be initiated as soon as possible. This is a crucial program performance measure and I expect to see improved results by the end of the second quarter.

I understand there were a number of problems with the Hazardous Waste Data Management System (HWDMS), resulting in no reporting at all for RCRA compliance and very sketchy data on Regional RCRA permitting activities. I have asked Lew Crampton to work with you to resolve these problems in time for the second quarter report. I am sure we both agree that it is important I receive accurate and complete data in these areas each quarter. The absence of any backup systems for collecting this important information in the event HWDMS fails is of particular concern to me.

I also understand the requested Regional targets for RCRA permitting and RCRA inspections were not negotiated between your office and the Regional Administrators in time for my first quarter report. Please make every effort to insure these targets are established and agreed upon with the Regional Administrators as soon as possible.

As you know, I am most anxious to have information on the environmental results of each of the Agency's programs. I expect to see as part of your second quarter report those indicators for which data are currently available. Please provide my staff with a schedule for identifying and reporting against additional environmental indicators during the next quarter.

The hazardous waste program is certainly one of the most difficult program areas in the Agency to administer and I know you and your staff are working extremely hard. Please let me know if there is anything I can do to assist you in reaching our mutual objectives. It is important that we establish a record of accomplishment in this program for which we can all take pride.

Anne M. Gorsuch

I am very concerned about OSWER's accountability results this quarter and do not want to wait until the end of the second quarter for a progress report.

I want you to submit the following items to CMSE no later than 3/1:

- FY'83 RCRA permitting and inspection targets with RA concurrences
- Progress in delegations for remedial activities
- FY'83 targets for clean ups (full implementation of selected engineering designs)
- RCRA enforcement data — lack of RCRA enforcement data is intolerable. Failure of HWIMS is no damn excuse.

A.

11/1 cc: Lee
Item 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV - 7 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: 1983 Management Accountability Measures

FROM: Rita M. Lavelle
Rita M. Lavelle, Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Lewis S.W. Crampton, Director
Office of Management Systems and Evaluation

This memorandum transmits our proposed 1983 measures and commitments for the Management Accountability System. This submission consists only of measures for the system we will be submitting our initial cut at most 1983 commitments by November 12, This date follows our November 8 and 9 Strategic Management Retreat after which we will be in a much better position to supply proposed national commitments.

We have accepted comments on our proposed permitting measures from your staff and expect to revise these measures based on our joint discussions. We will therefore submit these permitting measures by November 12, and continue to coordinate with our Regional counterparts in the development of commitments for these measures and for RCRA Final Authorization schedules. We will additionally provide the proposed schedule for the RCRA RIA's as soon as the Administrator has had an opportunity to comment on our proposal.

We have recently begun the job of deseminating the strategic plan and negotiating with the regions regarding levels of output they might commit to for the 1983 Fiscal Year. Unfortunately the Management Accountability process and our strategic planning process are out of phase and as a result are not completely synchronized, but as you know, many outside influences have caused the implementation of the plan to be delayed. As a result we may have to revise our MAS commitments based on the final outcome of Headquarters and Regional plan development. This may also mean that for some measures, the initial commitments may be to provide commitments at the end of the first quarter.

My staff is working closely with yours to keep this process running as smoothly and rapidly as possible. We are committed to supporting the Administrator and yourself in continuing to improve the usefulness and effectiveness of the Management Accountability System.

Please let me know if this schedule causes any problems so we may expeditiously resolve them.

Attachment
cc:
Office Directors
Kirby Biggs
Barry Korb

MAS Quarterly Report Measures

Superfund Program

REMEDIAL ACTIONS

		Establish commitments?
1. Number of remedial action master plans (RAMP) initiated this quarter	_____	Yes
2. Number of RAMP's completed this quarter	_____	Yes
3. Total remedial funds allocated this quarter ($000)	_____	No
4. Number of sites for which funds were allocated this quarter	_____	No
5. Number of sites where remedial work is underway	_____	No

Activity	(a) Number for which Funds obligated	(b) Funds obligated this quarter ($000)	(c) Number for which work initiated	(a) Yes (b) No (c) No
6. Remedial investigation/feasibility study (RI/FS)	_____	$_____	_____	
7. Engineering design	_____	$_____	_____	
8. Implementations	_____	$_____	_____	
9. Total remedial dollars obligated this quarter for RI/FS, Engineering designs, and Implementations		_____		Yes
10. Number of sites where an operable unit was completed this quarter		_____		No
11. Number of remedial cooperative agreements awarded this quarter was		_____		No
12. Number of remedial cooperative agreements amended this quarter		_____		No
13. Cumulative percent of total remedial obligations which were obligated under State-lead cooperative agreements		_____ %		No

MAS Quarterly Report Measures

Superfund Program

REMOVAL ACTIONS

		Establish commitments?
14.	Federally funded immediate removal actions initiated _____.	No
15.	Federally funded immediate removal actions completed _____.	No
16.	Federally funded planned removal actions initiated _____.	Yes
17.	Federally funded planned removal actions completed _____.	Yes
18.	Other EPA on-scene response _____.	No
19.	Total FY 1983 removal obligations ($000) through this quarter _____.	No

MAS Quarterly Report Measures
RCRA Enforcement

Regions

Objective

Improve compliance of hazardous waste facilities with appropriate requirements under RCRA

Measure

1. Specify the number of facilities for which compliance monitoring will be conducted each quarter during FY83. Quarterly commitments

   * Schedule- Conduct EPA compliance monitoring inspections in accordance with compliance monitoring schedule

3. Indicate number of facilities with Subtitle C Class I violations detected by EPA during the quarter (HWDMS is designed to indicate number of facilities out of violation; not number of violations detected). No Commitments (N/C)

4. Indicate the number of facilities for which Compliance Orders for RCRA Subtitle C Class I violations have been issued. N/C

5. Indicate the number of compliance inspections conducted by the States. N/C.

6. Indicate the number of handlers out of compliance with RCRA detected by the States. N/C

7. Indicate the number of RCRA compliance orders issued by the States. N/C

Reporting frequency -- Quarterly Status Report

Headquarters

Objective

Improve compliance of hazardous waste facilities with appropriate requirements under RCRA

Measure

1. Indicate number of hazardous waste handlers.

   * This is not appropriate for OWPE because the information is gathered by OSW. Please move this objective to " RCRA Program Commitments."

2. Indicate number of handlers with Class I violations brought into compliance during quarter. N/C

3. Indicate number of other handlers brought into compliance during quarter. N/C

4. Add - Improve tracking by defining data elements pertaining to RCRA compliance and enforcement in HWDMS for Regional staff.

Status report - Quarter 1, 2, 3, and 4

42-536 O—85——4

MAS 1983 Quarterly Reporting Measures
CERCLA Enforcement - HQ

Objective

Effectively implement a Superfund enforcement program to obtain voluntary cleanups where feasible or cost recovery in cases where EPA funds the cleanup activities.

Measure

1. Number of notice letters issued/number of sites. N/C
2. Number of sites where negotiations are underway with responsible parties. N/C
3. Number of Administrative Orders on consent issued. N/C
4. Add - Number of unilateral Administrative Orders issued. N/C
5. Number of responsible party cleanups/dollar value of cleanup. N/C
6. Number of cost recovery actions/dollars recovered. N/C

Objective

Improve Superfund and RCRA enforcement programs through development and issuance of new policies and guidelines in consultation with OLEC.

Measure

1. Develop schedule for issuing guidance jointly with OLEP/OLEC and, when necessary, with OERR and OSW.
   - Develop schedule (OLEP/OWPE Policy Calendar) - Quarter 1
   - Develop guidance according to schedule.
   - Status report Quarters 2, 3, and 4.

MAS Quarterly Reporting Measures

RCRA Measures

RCRA (Regions)

Objective

Permit call in and review

Measure

This measure will be provided on November 12. Commitments are yet to be negotiated with regional offices.

Delegation to States: RCRA (Regions)

Objective

Increase RCRA Phases I and II Interim Authorization and Final Authorization

Commitment

1. Update Phase I and Phase II RCRA authorization schedules
2. Develop Final RCRA authorization schedules (commitments still to be negotiated with regional offices

Developing and Reviewing Critical Regulations: RCRA (HQ)

Objective:

RCRA regulatory review activities

Measure

1. Indicate number of hazardous waste handlers.

   * This is not appropriate for OWPE because the information is gathered by OSW. Please insert this objective under " RCRA Program Commitments."

2. Meet regulatory review schedule for Regulatory Impact Analyses

   * Specific RIA's and RIA schedules will be provided upon receiving schedule approval from the Administrator.

Copy

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

11/1/82

Lew,

Attached are OSWER's proposed '83 Management accountability system measures. This completes the set of Accountability proposals we owed OM&E. As you know the effort to complete the final '82 report and design the new measures and systems strained our ability to respond on the schedule we had been shooting for.

Kirby Biggs will continue to work closely with your staff to fill in missing gaps as rapidly as possible. I believe that our efforts to integrate accountability measures and commitments into our strategy development process, although time consuming, will pay dividends in the long-run.

Barry Korb

Item 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 8 1982

OFFICE OF
POLICY AND RESOURCE MANAGEMENT

MEMORANDUM

SUBJECT: Results of Management Accountability System (MAS) Survey

FROM: Joseph A. Cannon
Associate Administrator for
Policy and Resource Management

TO: The Administrator

The attached memorandum contains the key findings and recommendations from a recent survey of 60 managers in Headquarters and the Regions on the Management Accountability System (MAS). The purpose of the survey was to determine the strengths and weaknesses of the MAS so we can ensure it remains a forceful management tool for you. During FY 83, we will be incorporating many of the recommendations for improving the system that are included in the attached report.

I would like to emphasize here the importance of your role in the success of the system as a management tool. It was clear from the survey that your personal review of performance and direct feedback through letters and discussions are vital. The Regions were particularly sensitive to your criticisms. Areas you suggest as needing improvement receive the personal attention of top management and they frequently divert staff resources to address your concerns. Many of those interviewed suggested that in addition to the letters, individual or joint meetings with both Regional and Assistant Administrators to discuss their quarterly performance would be an even more effective way to reinforce the system and ensure achievement of your management goals. In the same vein, a method of rewarding outstanding performance through awards or special public recognition would add extra incentive to do well.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
POLICY AND RESOURCE MANAGEMENT

NOV 8 1982

MEMORANDUM

SUBJECT: Results of Management Accountability System (MAS) Survey

FROM: Joseph A. Cannon Joseph A. Cannon
Associate Administrator for
Policy and Resource Management

TO: The Administrator

As part of our effort to refine and implement the Management Accountability System for FY 1983, the Office of Management Systems and Evaluation conducted a survey of Headquarters offices and five Regions (I, II, VIII, IX and X) during the period September 17 - October 7, 1982 (see attached interview list). Sixty Assistant Administrators, Regional Administrators, Office Directors and Division Directors were interviewed. The purpose of the survey was to assess the effectiveness of the current system and determine ways to improve it as a management tool for you.

Following are the key findings of the survey, along with our recommendations based on those findings.

KEY FINDINGS

* The Management Accountability System does many things well.

  - It conveys a top down message from you and directs attention to your priorities.

  - It is a catalyst for changing program emphasis. A number of Headquarters and Regional offices shifted resources to ensure that your goals were met.

  - Your personal involvement and quarterly feedback have had a positive impact on Headquarters and Regional activities, motivating employees to perform.

- The Accountability System has improved the management of the Agency by encouraging managers to focus on managing. It also has provided the impetus for a number of Headquarters and Regional managers to develop their own accountability systems to track more closely their programs.

- The Accountability System has greatly reduced the Headquarters and Regional reporting burden from what was previously required by the Planned Program Accomplishments (PPA) System.

- The success of the Accountability System depends upon your personal involvement. You must continue to use actively the Accountability System as a principal management tool.

- The effectiveness of the Accountability System as a tool for managing could be enhanced by further linking it with other EPA management systems.

  - Currently the issuance of the goals and objectives for the Accountability System (beginning of fiscal year) occurs too late to impact some of the Assistant Administrators' planning processes as well as the Regions' annual negotiation and planning with the States. These activities are initiated as early as February for the upcoming fiscal year.

  - There is no detailed guidance to provide specific policy direction for your goals and objectives or explain the relative significance of the Administrator's priorities among competing objectives. Some interviewees suggested that we develop operating year guidance to provide this.

  - There are no clear links between the Accountability System and the budget. A number of interviewees thought that the results of the Accountability System should be considered in allocating resources but cautioned against formally tying the two processes together.

- The Accountability System should emphasize the timeliness of actions rather than [redacted] resources we should be [redacted]

- The Accountability System should emphasize those program activities that have the greatest environmental payoff. The system should include some direct measures of environmental results where possible. As you know, one of your major goals for FY '83 is "Managing for Environmental Results."

- During the first year of operation, some measures contained in the Accountability System were not within the total span of control of the individuals ultimately held accountable for producing the results (e.g., delegation process, regulation development).

- The use of the quarterly Accountability System Report as a public information document could compromise its use as a management tool.

RECOMMENDATIONS

- Keep the current balance of goals, objectives and measures in the Accountability System. If the number of items tracked becomes too great, the System will lose its effectiveness as a management tool.

- Increase direct feedback to the Associate Administrators, Assistant Administrators and Regional Administrators. This could be accomplisned by dedicating a portion of the Regional Administrator's quarterly meetings to the MAS and/or individual meetings or phone calls, as necessary, to supplement your letters.

- Provide rewards to top managers for superior performance.

- Recognize that the Accountability System is a multipurpose vehicle and can assist in the Agency's planning and budgeting processes.

  - Continue to construct mechanisms that further link the Accountability System with other Agency management systems (e.g., budget, operating year guidance and individual performance standards).

  - Issue operating guidance early in the calendar year which provides more detailed policy guidance on your goals and objectives.

- Recognize that the Accountability System is a powerful tool for setting the tone and direction for the Agency. The relative importance of quantity versus quality should be carefully considered (e.g., timely issuance of RCRA permits versus quality of RCRA permits) both in reporting on quarterly performance and in conducting periodic management reviews.

- Continue to work toward identifying and tracking those aspects of EPA's activities that promise to have the greatest environmental payoffs.

- As per your instructions, undertake more management reviews of subpar performance situations uncovered by the Accountability System. Do this in a proactive way so that OPRM functions as your internal auditor of overall program management effectiveness within the Agency.

- Allow for system flexibility. Develop a written policy for making changes in targets and commitments and communicate that policy clearly to Associate Administrators, Assistant Administrators and Regional Administrators.

- Maintain the quarterly Accountability System Report as an internal management tool and do not deliberately distribute it as a public information document. Regional Administrators, Associate and Assistant Administrators can continue to re-release portions of the report to serve their needs, if desired.

Attachment

cc: Associate Administrators
Assistant Administrators
Regional Administrators

October 7, 1982

HEADQUARTERS OFFICES INTERVIEWED

MANAGEMENT ACCOUNTABILITY SYSTEM SURVEY

Office of Policy and Resource Management

Office of Policy Analysis/Dick Morgenstern
Office of Standards & Regs./Ron Smith

Office of Air, Noise and Radiation

Office of Air Quality Planning & Stds/Sheldon Myers

Office of Water

Assistant Administrator/Eric Eidsness
Deputy Assistant Administrator/Rebecca Hanmer
Office of Water Enforcement/Bruce Barrett
Office of Water Regs. & Stds./Steve Schatzow
Office of Water Programs Oper./Henry Longest
Office of Drinking Water/Vic Kimm
Office of Water Planning/Peter Wise
Enforcement Division/Dave Lyons and Robert Zeller

Office of Solid Waste & Emergency Response

Office of Emergency & Remedial Response/Bill Hedeman
Office of Solid Waste/John Skinner
Office of Waste Programs Enforcement/Gene Lucero

Office of Legal and Enforcement Counsel

Policy Staff/Kirk Sniff

Office of Pesticides and Toxic Substances

Office of Toxic Substances/Don Clay/Marcia Williams
Assessment Division/Tim Titus
Pesticides and Toxics Enforcement/Terrell Hunt
Registration Division/Doug Campt
Pesticide Review/Bill Dickinson
Office of Pesticide Programs/Lou True
Office of Toxics Integration/Walter Kovalick

Office of Administration

Assistant Administrator/John Horton
Office of Personnel & Organization/Ken Dawsey
Office of Fiscal & Contracts Mgmt./Clarence Mahan
Office of Mgmt. Infor. & Support Services/Ed Hanley

Office of Research and Development

Assistant Administrator/Courtney Riordan
Office of Research Program Mgmt./Sam Rondberg
Office of Exploratory Research/Carl Gerber
Office of Health Research/Roger Cortesi

October 7, 1982

REGIONAL OFFICES INTERVIEWED

MANAGEMENT ACCOUNTABILITY SYSTEM SURVEY

Region I

Lester Sutton - Regional Administrator
Harvey Laing - Director, Air Programs
Paul Keough - Senior Policy Advisor to Regional Administrator
✓Pat Meany - Branch Chief, Program Evaluation and Analysis
Management Division
Jeff Fowley - Associate Acting Regional Counsel for Water

Region II

Conrad Simon - Director, Air and Hazardous Waste Division
✓Herb Barrack - Assistant Regional Administrator for Planning and
Management
Barbara Metzger - Director, Environmental Services Division
Warren Llewellyn - Acting Regional Counsel
Acting Enforcement Division Director
Richard Caspe (for Bill Muzinski, Director of Water Division)
Kevin Bricke, State Coordinator (SEAs, 106, 105 grants)

Region VIII

Steve Durham - Regional Administrator
Seth Hunt - Deputy Regional Administrator
✓Bob Walker - Assistant Regional Administrator for Policy and
Management
Jim Lear - Deputy Division Director, Air and Hazardous Waste
Max Dodson - Director of Region VIII's Water Divisions
Bob Simmons - Director, Management Systems and Analysis
Irv Dickstein - Director, Environmental Service Division

Region IX

✓John Wise - Deputy Regional Administrator
Harry Seraydarian - Director, Hazardous Waste
Frank Covington - Director, Water Division
Dave Howecamp - Director, Air Management Division

Region X

Dr. Ed Coate - Deputy Regional Administrator
Randy Smith - Branch Chief, Resource Management Division
✓Nora McKee - Director, Management Division
Bob Burd - Director, Water Division
Chuck Findley - Deputy Director, Air Division
Dick Bauer - Deputy Director, Environmental Service Division

Item 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Rec. 1/21/83

JAN 21 [illegible]

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

Subject: First Quarter Reporting for the FY 1983 Management Accountability System

From: Rita M. Lavelle, Assistant Administrator
Office of Solid Waste and Emergency Response

To: Lewis S.W. Crampton, Director
Office of Management Systems and Evaluation

Attached is OSWER's first Quarterly Report for the Management Accountability System.

To our dismay, some of the requested data is not yet available. In particular, no RCRA compliance data is being provided. The required information was supposed to be provided through the HWDMS data base. For a combinations of reasons the system did not yield the expected data. We are working to obtain the data. Furthermore, some other measures and systems problems will need to be reviewed by our staffs prior to the second quarter report based on our experience to date.

The problems encountered were unexpected. We pushed our programs hard to ensure that our new data systems would provide the information we and the Administrator need to manage. We will seek an indepth explanation as to why the automated data systems did not work and why headquarters and regional problems in definitions and data compilation did not surface earlier. We will schedule a meeting with you in February to review our status. Thus, we can both be sure that this does not reoccur next quarter.

We appreciate the patience of your staff in working with us on the new measures and reporting systems. As you know we are trying to get new programs and systems up to speed at an accelerated pace. We are as disturbed as you that the procees did not flow smoothly this quarter, but believe our efforts will pay off in effective program management tools.

FIRST QUARTER FY 1983 REPORTING INSTRUCTIONS
FOR THE OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

Please place the appropriate date or number in the spaces provided. There is space provided after each reporting measure for you to submit any necessary explanatory details. (Note: This year, OSWER will provide all necessary information for the Administrator's Accountability System. In FY 1982, the Regions submitted quarterly information on RCRA authorizations, inspections and enforcement activities.)

RCRA

Authorizations

R/C-2 Report on FY 1983 Phase I and Phase II milestones against schedule submitted in first quarter (see Attachment I).

Comments:

4 OF 6 MILESTONES ACCOMPLISHED. SEE ATTACHMENT I FOR SPECIFICS. REMAINING 2 MILESTONES ANTICIPATED TO BE MET BY END OF SECOND QUARTER.

R/C-3 Provide a date for submittal of final authorization targets. 6/30/83

DELAY IN FINAL GUIDANCE ISSUANCE WOULD LIMIT SOUNDNESS OF ANY SECOND QUARTER PROJECTIONS. GUIDANCE DELAY CAUSED PARTLY BECAUSE OF EFFORT TO ENSURE MAXIMUM ALLOWABLE AND APPROPRIATE FLEXIBILITY.

RIAs

R/C-6 Report, as appropriate, on achievement of FY 1983 RIA milestones contained in the FY 1983 Goals, Objectives, Commitments and Measures, dated November 30, 1982.

Comments:

TO BE PROVIDED DURING SECOND QUARTER.

Permits

R/C-8 Using format contained in Attachment II (A,B&C) report on first quarter permit activities related to existing facilities. Report against call-in and processing targets submitted first quarter. Also provide number of permit applications received during quarter.

WE HAVE PROVIDED CUMULATIVE #. BY 2nd QUARTER, SHOULD BE ABLE TO WORK OUT PROGRAMMING PROBLEMS & PROVIDE A QUARTERLY BREAK.

Comments:

_____

_____

_____

R/C-10 Using format contained in Attachment III, report on first quarter permit activities related to new facilities. Also provide number of permit applications received during quarter.

Comments:

_____

_____

_____

EPA Inspections

R/C-11 Submit schedule for number of facilities for which compliance monitoring will be conducted by EPA each quarter(by Region).*

Region	Q1	Q2	Q3	Q4
I	___	___	___	___
II	___	___	___	___
III	___	___	___	___
IV	___	___	___	___
V	___	___	___	___

*THIS SCHEDULE IS STILL UNDER NEGOTIATION WITH THE REGIONS. IT SHOULD BE AVAILABLE BY THE SECOND QUARTER

Region	Q1	Q2	Q3	Q4
VI				
VII				
VIII				
IX				
X				

R/C-12 Number of compliance monitoring inspections conducted by each Region during quarter.

Region	No. of Inspections *
I	0
II	0
III	0
IV	0
V	0
VI	0
VII	0
VIII	0
IX	0
X	0

* THE INFORMATION FOR THIS DATA ONLY WAS SUPPOSED TO BE PROVIDED THROUGH THE HWDMS DATA BASE. DUE UNCERTAIN REVISIONS THE SYSTEM DID NOT YIELD THE EXPECTED RESULTS. WE EXPECT TO HAVE THE PROBLEMS SOLVED BY THE SECOND QUARTER.

R/C-13 Number of EPA inspections of major facilities. 0

Comments:

_____

_____

_____

Baseline EPA Compliance Data (Note: This data only has to be reported first quarter.)

R/C-14 Total number of major facilities * _____

*FACILITIES SHOULD BE "HANDLERS" WHICH INCLUDES FACILITIES, TRANSPORTERS + GENERATORS

R/C-15 Number of major facilities where Class I violations have been detected (from October 1, 1981 through Sept. 30, 1982).* _____

R/C-16 Number of compliance orders issued for major facilities with Class I violations (from Oct. 1, 1981 through Sept. 30, 1982). * _____

R/C-17 Number of major facilities with Class I violations that returned to compliance (from implementation of RCRA enforcement program to September 30, 1982).* _____

* THE LIST OF "MAJOR" FACILITIES IS STILL BEING NEGOTIATED WITH THE REGIONS AND WILL BE AVAILABLE AT THE END OF THE SECOND QUARTER. The list of majors is redetermined each year

Quarterly Reporting - EPA Compliance Data

R/C-18 Number of major facilities by Region where Class I violations have been detected during quarter.

Region	Major Facilities with Class I Violations *
I	_____
II	_____
III	_____
IV	_____
V	_____
VI	_____
VII	_____
VIII	_____
IX	_____
X	_____

*SEE FOOTNOTE TO RC-12

R/C-19 Number of compliance orders issued by Region for major facilities with Class I violations during quarter.

Region	Compliance Orders Issued for Major Facilities with Class I Violations*
I	
II	
III	
IV	
V	
VI	
VII	
VIII	
IX	
X	

*SEE FOOTNOTE TO RC-12

R/C-20 Number of major facilities by Region with Class I violations that returned to compliance during quarter.

Region	Major Facilities with Class I Violations Returned to Compliance*
I	
II	
III	
IV	
V	
VI	
VII	
VIII	
IX	
X	

*SEE FOOTNOTE TO RC-12

State Enforcement Data

R/C-21 Number of compliance inspections conducted by the States during quarter. _____

R/C-22 Number of facilities with RCRA violations detected by the States during quarter. _____

R/C-23 Number of RCRA compliance orders issued by the States during quarter. _____

Comments:

AS AGREED TO IN DEVELOPING THE ACCOUNTABILITY MEASURES, THE STATE ENFORCEMENT DATA WILL LAG BY ONE QUARTER

Environmental Results

R/C-24 Specify capacity of a) existing facilities, and b) new facilities issued permits this quarter to treat, store, or dispose of hazardous waste.*

Existing facilites

New facilities

CANNOT PROVIDE. QUESTIONS ABOUT ACCURACY OF DATA. ~~FOR~~ FOR CAL/DAY OF STORAGE CAPACITY.

* RECOMMEND DELETE 1ST QUARTER AS ONLY 2 PERMITS ISSUED.

SUPERFUND

Remedial and Removal Activities

S/F-1 thru S/F-23 Use format contained in Attachment IV to report on commitments.

Enforcement

S/F-24 Number of notice letters issued/number of sites this quarter. 216 LETTERS/245 ITES

S/F-25 Number of sites where negotiations are underway with responsible parties this quarter. 68

S/F-26 Number of Administrative Orders on consent issued this quarter. 1 SITE/112 ORDERS

S/F-27 Number of unilateral Administrative Orders issued this quarter. 1 SITE / 1 ORDER

S/F-28 Number of responsible party cleanups/ dollar value of cleanup this quarter. 3 SITES / ESTIMATED VALUE $35.5m)

S/F-29 Number of cost recovery actions/dollars recovered this quarter. 1 SITE ($500K FEDERAL COST RECOVERY - $/3.5 STATE COST RECOVERY)

Comments:

_____

_____

_____

ENVIRONMENTAL RESULTS

S/F-30 Specify the number of priority list sites where corrective action has begun or been completed this quarter, as a result of State, private party or EPA actions under CERCLA.*

	Begun	Completed
Private party cleanup:	_____	_____
State action:	_____	_____
EPA action:	_____	_____

* DATA NOT AVAILABLE FROM PROGRAMS IN REQUIRED FORMAT; DEFINITIONS NEED CLARIFICATION

ATTACHMENT I

Regional Commitments

Schedule

RCRA Phase I Interim Authorization

FY '83

Region I

All States have obtained Phase I authorization.

Region II

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
NJ	11/81	12/81	12/81	~~12/82~~ NO
NY	6/81	10/81	1/82	--
PR	11/81	12/81	1/82	10/82 YES
VI	--	--	--	--**

*NY may go directly to final authorization.
**VI will go directly to final authorization.

Region III

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
DC	11/82	~~12/82~~ 2/83	~~2/83~~ 7/83	~~2/83~~ 10/83
DE	Authorized			2/81
MD	Authorized			7/81
PA	Authorized			5/81
VA	Authorized			11/81
WV	11/82	~~1/83~~ 3/83	~~4/83~~ 7/83	~~10/83~~ 10/83

Region IV

All States have obtained Phase I authorization.

Region V

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
IL	Authorized			5/82
IN	Authorized			8/82
MI	Will go directly to final authorization.			
MN	Will go directly to final authorization.			
OH	1/82	2/82	2/83	7/83
WI	Authorized			1/82

Region VI

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
AR	Authorized			11/80
LA	Authorized			12/80
NM	10/81	11/81	7/83	11/83
OK	Authorized			1/81
TX	Authorized			11/80

Region VII

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
IA	Authorized			
KS	Authorized			
MO	8/81	11/81	1/83	6/83
NE	Authorized			

Region VIII

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
CO	Will go directly to final authorization.			
MT	Authorized			
ND	Authorized			
SD	Will go directly to final authorization.			
UT	Authorized			
WY	Does not intend to adopt RCRA program; Region VIII will implement program.			

Region IX

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
AZ	Authorized			8/82
CA	Authorized	11/82	1/83	--
HI	10/82		2/83	6/83
NV	9/82			

Region X

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
AK	3rd Q	3rd Q	4th Q	4th Q
OR	Authorized 5/82	6/82	3rd Q	4th Q
WA	Statutory Authority obtained		3rd Q	
ID				

Regional Commitments

Schedule

RCRA Phase II Interim Authorization

FY '83

Region I

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
CT	11/82	12/82 YES	4/83	6/83
MA	5/83	6/83	7/83	9/83
ME	12/82 NO	1/83	2/83	4/83
NH	11/82	12/82 YES	1/83	3/83
RI	12/82 (no)	1/83	2/83	4/83
VT	4/83	5/82	9/82	12/82 YES

COMMENTS: Above dates assume adequate legal resources available. In the event resources are not available due to enforcement negotiations, court trials, etc., we will be unable to make the above schedule.

RCRA Final Authorization Status

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
CT	3/84	4/84	8/84	12/84
MA	3/84	4/84	8/84	12/84
ME	3/84	4/84	8/84	12/84
NH	3/84	4/84	8/84	12/84
RI	3/84	4/84	8/84	12/84
VT	3/84	4/84	8/84	12/84

Region II

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
NJ	2/83	4/83	6/83	9/83
NY	May go directly to final authorization.			
PR	May go directly to final authorization.			
VI	Will go directly to final authorization.			

Region III

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
DC	11/82 YES	~~1/83~~ 2/83	~~4/83~~ 7/83	~~7/83~~ 12/83
DE	Will go directly to final authorization.			
MD	6/82	~~9/82~~ 11/82 YES	~~1/83~~ 2/83	~~4/83~~ 7/83
PA	~~6/82~~	9/82	~~1/83~~ 4/83	~~5/83~~ 2/84
VA	~~11/82~~ YES	~~1/83~~ 2/83	~~4/83~~ 6/83	~~8/83~~ 11/83
WV	~~11/82~~ NO	~~1/83~~ 3/83	~~4/83~~ 7/83	~~10/83~~ 12/83

Region IV

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
AL	12/81	~~2/82~~	6/83	9/83
FL	8/82	11/82	1/83	5/83
GA	Authorized			~~5/82~~
KY	12/81	2/82	9/82	12/82 NO WHY
MS	Authorized			8/82
NC	Authorized			3/82
SC	Authorized			11/82 YES
TN	2/82	3/82	7/83	10/83

Phase II

Region V

No Phase II Commitments. At this time, all Region V States plan to go directly to final authorization.

Final Authorization

	State Submits Final Application
IL	10/83
IN	10/83
MI	3/84
MN	2/84
OH	2/84
WI	10/83

Region VI

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
AR	Authorized			4/82
LA	8/82	9/82	8/83	12/83
NM	10/81	11/81	7/83	11/83
OK	3/82	4/82	9/82	12/82 YES
TX	Authorized			3/82

Region VII

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
IA	Will go directly to final authorization.			
KS	Will go directly to final authorization.			
MO	1/82	2/82	1/83	--
NE	6/83	9/83	--	--

Region VIII

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
CO	Seeking full authorization.			
MT	11/82	1/83	2/83	3/83
ND	No Phase II planned at this time.			
SD	Will go directly to final authorization.			
UT	No Phase II planned at this time.			
WY	Does not intend to adopt RCRA program; Region VIII will implement program.			

Final Authorization

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
CO	7/83	9/83	10/83	1/84
MT	5/83	7/83	7/83	9/83
ND	9/83	11/83	11/83	2/84
SD	4/83	6/83	7/83	9/83
UT	6/83	8/83	9/83	12/83
WY	Does not intend to adopt RCRA program; EPA will implement program.			

Region IX

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
AZ	--	--	--	--
CA	12/81	1/82	5/82	1/83
HI	--	--	--	--
NV	9/82	11/82	--	--

Region X

	State Submits Draft Applications	EPA Submits Comments on Draft	State Submits Final Application	EPA Makes Interim Authorization Decision
AK	3rd Q	3rd Q	4th Q	4th Q
OR	3/82	5/82	4th Q	4th Q
WA	4/82	6/82	3rd Q	4th Q
ID	--	--	--	--

1-13-83

Reporting Format

MAS QUARTERLY COMMITMENTS
SUPERFUND PROGRAM

FY 1983

Remedial Actions

S/F-1	Number of remedial cooperative agreements awarded this quarter.	5
S/F-2	Number of remedial cooperative agreements amended this quarter.	-0-
S/F-3	Cumulative percent of total remedial obligations which were obligated under State-lead cooperative agreements this Fiscal Year.	93.2 %
S/F-5	Number of remedial action master plans (RAMPs) initiated this quarter.	48 45
S/F-6	Number of RAMPs completed this quarter.	10
S/F-8	Number of new sites for which funds were obligated during this quarter:	
	- Remedial Investigations/Feasibility Studies	4 1/
	- Engineering Designs	1
	- Implementation	2 1/
S/F-9	Number of sites for which work orders were issued and State contracts awarded during this quarter.	
	- Remedial Investigations/Feasibility Studies	4 2/
	- Engineering Designs	2 2/
	- Implementation	0

1/ Includes 1 site listed under both activities.
2/ All are EPA lead. Data on State procurements is unavailable this quarter.

S/F-11 Number of dollars obligated during quarter for:

- Remedial Investigations/Feasibility Studies ($000) $ 2,349.1 [3]
- Engineering Designs ($000) 83.0 [3]
- Implementation ($000) 2,719.7 [3]

$5,181.8 [3]

S/F-12 Cumulative amount of FY 1983 remedial funds obligated through quarter. ____

S/F-13 Cumulative amount of FY 1983 remedial funds allocated through this quarter ($000). $8,323.6

S/F-14 Cumulative number of FY 1983 sites for which remedial funds were obligated through this quarter. 10

S/F-15 Number of sites where remedial work is underway (cumulative from start of program). ~~FF~~ 62

~~S/F-16 Number of sites where an operable unit was completed this quarter.~~ —

Removal Actions

S/F-18 Number of planned removals initiated this quarter. 1

S/F-19 Number of planned removals completed this quarter. +2

S/F-20 Number of Federally funded immediate removal actions initiated this quarter. 10

S/F-21 Number of Federally funded immediate removal actions completed this quarter. 15

S/F-22 Number of other EPA on-scene response activities undertaken this quarter. 95

[3] Source: EPA Financial Management Information System. Not strictly comparable with previous reports which used other sources.

Explain types of on-scene activities undertaken:

Removal operations by responsible parties or State/local authorities where EPA oversight, coordination, and technical assistance provide quality assurance for the cleanup.

S/F-23 Cumulative amount of FY 1983 removal funds obligated through this quarter ($000) $/ 1,143.6

Permitting Actions - Part B Processing
Existing Facilities

Status as of: 01-12-83
Contact: John Connolly 38 42

REGION	Storage & Treatment Only, Excluding Incineration						
	Facilities To Be Called 1/	# Called to Date 2/	# Received to Date 2/	# Withdrawn 2/	# Overdue	Permit Actions Completed 2/	Average Time for Final Disposition 3/ (Days)
Note changes 1/14 → 1	76	59 ~~50~~	31 ~~5~~	24 ~~0~~	25 ~~0~~	0	0
2	70	51	30	0	0	0	0
3	108	107	29	28	13	0	0
4	100	119	127	39	0	0 ~~1~~ ~~22~~	~~200~~
5	160	187	196	57	0	0	0
6	45	33	6	24	0	0 ~~1~~ ~~2~~	0 ~~202~~ ~~0~~
7	38	51	21	5	5	0 ~~2~~	0 ~~354~~
8	27	35	33	6	3	0	0
9	40	30	34	18	0	0	0
10	34	29	36	0	0	0	0
TOTAL → ~~57~~	698	701 ~~692~~	543 ~~549~~	201 ~~177~~	46 ~~21~~	0 ~~4~~	~~278~~ 0

1/ This column excludes applications in Phase II authorized States, Part A and Part B withdrawals, Part B's called in and facilities granted RCRA permits.

2/ Represents cumulative totals since inception of program in FY '82.

3/ Average time from initial receipt to final Regional disposition whether withdrawal, issuance, or denial or turnover to States which achieve authorization; excludes PAT review of applications.

Permitting Actions - Part B Processing
Existing Facilities

States as of: 01-12-83
Contact: John Connolly 381-42

REGION	Disposal, May Include Any Processes						
	Facilities To Be Called 1/	# Called to Date 2/ 4/	# Received to Date 2/ 4/	# Withdrawn 2/ 4/	# Overdue 4/	Permit Actions Completed 2/	Average Time for Final Disposition 3/ (Days)
1	9	0	0	0	0	0	0
2	26	0	0	00	0	0	0
3	26	0	0	00	0	0	0
4	24	0	0	00	0	0	0
5	54	0	0	0	0	0	0
6	40	0	0	0	0	0	0
7	8	00	0	0	0	0	0
8	16	0	0	0	0	0	0
9	20	0	0	0	0	0	0
10	8	0	0	00	0	0	0
TOTAL	231	0	0	0	0	0	0

1/ This column excludes applications in Phase II authorized States, Part A and Part B withdrawals, Part B's called in and facilities granted RCRA permits.

2/ Represents cumulative totals since inception of program in FY '82.

3/ Average time from initial receipt to final Regional disposition whether withdrawal, issuance, or denial or turnover to States which achieve authorization; excludes PAT review of applications.

4/ REGULATIONS BECOME EFFECTIVE JAN. 26th. SOME ACTIVITY HAS OCCURRED, BUT IT IS NOT REPORTED BECAUSE ITS PRECISE NATURE IS UNKNOWN

Permitting Actions Part B - Processing
Existing Facilities

Status as of: 01-13-83
Contact: John Connolly 382-7812

REGION	Incineration, May Include Any Process Except Disposal						
	Facilities To be Called 1/	# Called to Date 2/	# Received to Date 2/	# Withdrawn 2/	# Overdue	Permit Actions Completed 2/	Average Time for Final Disposition 3/ (Days)
1	13	5 ~~7~~	1 ~~0~~	1 ~~0~~	0	0	0
2	16	9	1	0	0	0	0
3	22	14	1	0	0	0	0
4	24	13	17	0	0	1 ~~0~~	358
5	29	17	20	1	1	0	0
6	32	8	0	0	0	0	0
7	6	5	1	0	0	0	0
8	12	3	3	0	0	0	0
9	22	8	8	0	0	0	0
10	3	2	2	0	0	0	0
TOTAL	179	84 ~~81~~	54 ~~53~~	2+	1	1	358

1/ This column excludes applications in Phase II authorized States, Part A and Part B withdrawals, Part B's called in and facilities granted RCRA permits.

2/ Represents cumulative totals since inception of program in FY '82

3/ Average time from initial receipt to final Regional disposition whether withdrawal, issuance or denial or turnover to States which achieve authorization; excludes PAT review of applications.

Permitting Actions - Part B Processing
(New) Facilities

Status as of 1-14-83
Contact: John Connolly 382-4752

REGION	Storage & Treatment Only, Excluding Incineration			Incineration, May Include Any Processes Except Disposal			Disposal, May Include Any Processes		
	# Rec'd to Date 1/	Permits Issued 1/	Average time for final Disposition 2/ (Days)	# Rec'd to Date 1/	Permits Issued 1/	Average time for final Disposition 2/ (Days)	# Rec'd to Date 1/	Permits Issued 1/	Average time for final Disposition 2/ (Days)
1	4	0	0	1	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0
3	6	0	0	1	0	0	2	0	0
4	3	1	175	0	0	0	1	0	0
5	5	0	0	2	0	0	2	0	0
6	0	0	~~0~~	12	0	0	1	1	202
7	3	2	354	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0
9	2	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0
TOTAL	23	3	294	5	0	0	6	1	202

1/ Represents cumulative totals since inception of program in FY '82.

2/ Average time from initial receipt to final Regional disposition whether withdrawal, issuance, or denial or turnover to States which achieve authorization; excludes applications referred for PAI review.

42-596 O-85---6

Item 6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 30 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Managing for Environmental Results

FROM: Rita Lavelle
Assistant Administrator Designate

TO: Lewis S.W. Crampton, Director
Office of Management Systems and Evaluation

As you requested in your February 16th memo, OSW and OERR have separately identified several areas where we currently manage for environmental results. These memoranda also suggest other environmental results possibilities which could potentially play a role in OSWER program management. The attached comments are only initial reactions and ideas; the "first cut" you suggested in your memo.

Barry Korb will be responsible for coordinating OSWER's activities in this area. I see it as an integral part of OSWER's strategic management system. I want the goals and objectives of this system to be oriented towards environmental results and able to directly track the achievement of environmental goals, to the extent possible. We will be keeping "environmental results" in mind at our upcoming strategy development session.

One idea I want OERR to pursue is the development of improved environmental results indicators for the Superfund Program Evaluation and Tracking System. Such a measure or measures could be a useful management tool.

I look foreward to working with you in this difficult, but essential effort.

cc: Barry Korb
Mike Cook
Lee Dannaker
OSWER Office Directors

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

cc: MSD

MAR 10 1982

Managing for Environmental Results

Gary Dietrich, Director
Office of Solid Waste (WH-562)

Lewis Crampton, Director
Office of Management and Assistance
Evaluation (PM-212)

The following are some thoughts on managing for environmental results, as requested in your memo of February 16. I have used specific examples from methods we are using or might use for programs in the Office of Solid Waste.

Measures of Environmental Achievement. Measuring progress with surrogate objectives closely related to environmental goals is obviously desirable, but normally expensive, difficult and time consuming. Results are likely to come long after the Agency takes programmatic actions (permits, grants) and suggest little in the way of desirable management changes for the current program.

For example, we might state the goal of the hazardous waste program to avoid damage to human health and the environment. Our information on damages to human health and the environment from mismanagement of hazardous wastes is primarily found in individual case studies. This information has been quite expensive to collect, is only suggestive rather than conclusive in many cases, and does not lend itself to projections of total damages nationally.

More distant surrogates are somewhat easier to track. For example, we hope to gather some information from our annual survey of a sample of generators and hazardous waste facilities on capacity for proper disposal, waste reduction due to recycling, reuse and recovery, and the extent to which wastes are being properly managed. We also hope to obtain indications of proper management from compliance data and from field evaluation of the program by our small program evaluation staff and contract.

I would note that collection even of these surrogate indicators of achievement runs counter to the goals of paperwork reduction.

Regulatory Focus. We are trying to determine rough priorities for regulation by analyzing the costs of controlling different wastes by various technologies in a variety of environmental settings. This analysis should also suggest an appropriate level of control for different waste-technology-environmental combinations. The results will appear over the next year in regulatory impact analyses we are preparing on all our major regulations. This analysis requires a great deal of data, resources, and time. We expect it to result in more tailored, but more detailed and lengthier regulations. EPA should undertake CONCURRENCES approach elsewhere only when potential benefits are substantial.

SYMBOL							
SURNAME							
DATE							

EPA Form 1320-1 (12-70)

OFFICIAL FILE COPY

Standards. Environmental regulatory standards might be divided generically into three types: environmental performance standards, technological and operational performance standards, and detailed technological and operational requirements.

Environmental performance standards obviously relate most directly to environmental objectives. They provide maximum flexibility to regulated parties. They are, however, often difficult to develop and apply in practice. Non-compliance is discovered only after substantial capital is invested. Convincing regulated parties they should make expensive improvements may be very difficult. Considerable damage to health and the environment may result before a violation is corrected.

Technological and operational performance standards and detailed requirements are preventive rather than reactive. Both approaches tend to be easier to develop and administer than environmental performance standards. Their drawbacks are that they limit flexibility and may not result in the desired environmental performance. These advantages and disadvantages tend to be greater for detailed requirements than for performance standards.

My conclusion is that we should consider case-by-case which standard or combination of standards to use, always keeping in mind, of course, the overall environmental goals.

Please contact Mike Cook (382-4606) or myself (382-4604) if you would like to discuss further these or related points.

WH:MCook:bm:3/9/82:x52736:382/4606:401 M

ATTACHMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 30 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM:

SUBJECT: Managing for Environmental Results
--Initial Ideas and Proposals

FROM: Lee Daneker, Acting Director
Office of Policy and Program Management (WH-548D)

TO: Lewis S.W. Crampton, Director
Office of Management Systems and Evaluation (PM-222)

The purpose of this memorandum is to respond to your request for thoughts on how the Agency should go about "managing for environmental results." Because Superfund is a new program, it presents a unique opportunity to develop management systems based on Environmental results. I have outlined below several approaches we are using in the Superfund program to maximize environmental results.

- As required by the CERCLA Legislation, we have established a priority list of sites targeted for action under Superfund. The sites were prioritized using a hazard ranking model which considered pollutants carried by air, groundwater and surface water sources and was weighted for the population at risk. This information will allow the Agency to use its resources to address the most serious problems, where environmental results are most critical.

- Cleanup actions at sites are initiated after considering environmental results. Each remedial action is preceded by a feasibility study which discusses alternative remedies and outlines their costs and potential environmental results. Actual cleanup is conducted in phases. At the end of each phase, the Agency will consider what has been achieved, what further actions can be taken, their potential results, and their costs.

- We are working to develop integrated management information systems which will present decisionmakers with information on environmental results in a useful format.

- We are collecting information on remedial response actions successfully completed to assist in technical decisionmaking, including the selection and implementation of remedial actions. This information will ensure that the Agency considers techniques that have been proven successful in the past and will maximize environmental benefits.

- We will continue to compile information on substances found at sites, their degree of hazard, and the affected population. This information will allow us to expand our priority list of sites and will provide a base for measuring our accomplishments.

- We have already included a measure of environmental results in our first accountability report to the Administrator. The measure includes information on public health threats present at sites (e.g., ground water contamination) and the percentage of sites where the threat has been addressed. We hope to incorporate information on the affected population at each site, before and after Superfund remedial action.

Rec'd 1/27/87
Item 7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Environmental Results Indicators

FROM: Rita M. Lavelle, Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Lewis S.W. Crampton, Director
Office of Management Systems and Evaluation

We have reviewed your proposal concerning indicators of the environmental results acheived by OSWER programs in our headquarters offices and have also received and reviewed regional comments on that proposal. Each proposed indicator is addressed individually below from the headquarters perspective and individual regional comments of merit are addressed.

General Comments

1.) Although both RCRA and CERCLA are designed to control hazardous wastes, their individual purposes are quite different and the individual data bases are, for the most part, mutually exclusive. Indicators for each statute, for most effective tracking of the results of each effort, should be separated, developed,and tracked individually. This does not mean that each program must have different indicators, although in some instances this will be true, only that it is organizationally and conceptually more simple to address them separately.

2.) Development and tracking of "promising indicators" may involve significant personnel and monetary considerations in terms of both actual data collection, archival, reporting, analysis, and indicators calibration; and in process considerations like Paperwork Reduction Act budgets and information collection forms approval, internal Agency processes to further develop indicators to point of use, and guidance development to ensure consistant reporting on national basis.

INDICATORS FOR IMMEDIATE REPORTING

The spectrum of critical Superfund sites that, when addressed, will produce an "environmental result" consists of Priority List sites, non-priority list sites addressed through enforcement action and those non-priority list sites addressed through non-federally-financed State cleanups and unilateral State enforcement actions. The indicators proposed below provide information about those groups of sites.

SUPERFUND

OMSE Proposal:

Number of active or inactive hazardous waste sites where corrective action has begun or been completed as a result of state and EPA actions under RCRA and CERCLA.

It is assumed that this indicator is meant to be a Superfund indicator (see RCRA discussion for counterpart measure) and the reference to RCRA is designed include on-going uncontrolled sites cases filed under §7003. As such the indicator should be modified to read:

OSWER Proposal:

Number of [priority list sites] where corrective action has begun or been completed as a result of state,[private party or], EPA actions under CERCLA.

Reasons for modifying this bullet are as follows:

- Priority list sites are, in essence, "majors" in the Superfund program and will be the program's main focus throughout the course of the legislation.
- Enforcement actions can be taken at non-priority list sites which pose threats, but Fund-financed remedial action (other than emergency actions) will only be taken at priority list sites.
- Private party cleanups will occur most frequently as a result of some forcing action(s) on the part of EPA and thus will be tracked as enforcement generated cleanups.
- Collecting information about priority list and enforcement activity should allow for the capture of data on the most serious problems, since the Superfund universe is relatively constant (fails to include only those sites not yet discovered and any additional RCRA dropouts).
- A sizeable number of ongoing §7003 cases have been amended to include CERCLA counts and are thus Superfund enforcement cases currently being tracked.

- Unilateral State cleanup or enforcement actions taken at non-priority list sites are not currently tracked and could not currently be provided. It is not presently known what segment of the Superfund universe this piece might comprise.

Additional comments on this indicator

OERR

The results of a containment action may constitute all that is needed to effect the desired "environmental result". There is no distinction between a containment and cleanup action unless these terms are clearly defined. More appropriate and widely understood terminology would be that currently used in the program -- immediate or planned removals and remedial actions.

OSW

If, in fact, RCRA was intended to be included in this indicator it would be precluded from 1983 reporting. Unless corrective actions take place as a result of a permit or enforcement action information on action by responsible parties will not be readily available. Even data on cleanups taken in reaction to permit terms will not be available in the near future because permitting is only in its earliest stage.

Region VI

The difference between beginning corrective action and completing corrective action can be quite large. From a results viewpoint the distinction between these two events needs to be made.

RCRA

Critical RCRA facilities consist of "Majors" (primarily land disposal and incinerators). Facilities subject to permits are comprised of existing facilities and new facilities. Additional RCRA "problems" will be those facilities which submit permit applications but either withdraw them or are turned down. "Problem" facilities in interim status are identified primarily by inspections which identify violations (Class I, II, and III). The indicators proposed below provide information about those groups of sites.

OMSE Proposal

Number of active or inactive hazardous waste sites where corrective action has begun or been completed as a result of state and EPA actions under RCRA and CERCLA.

To track this indicator for current reporting, compliance statistics probably provide the only surrogate measure with any relevant application. Revise the indicator to read as stated below.

OSWER Proposal

Number of active hazardous waste facilities where enforcement action has begun or been completed as a result of state and EPA actions under RCRA.

To track progress of both EPA and States in implementing RCRA use:

- Numbers of RCRA inspections of majors
- Major facilities where Class I violations have been detected, (number of violations only for State reporting - Class I not tracked separately at the State level)
- Major facilities issued compliance orders
- Major facilities where civil actions have been brought
- Major facilities where enforcement action has been resolved

Coupled with permitting of existing facilities, new facilities and those applying and denied or withdrawn, this indicator will, in large measure, address progress at the most significant RCRA problems.

OSWER Proposal

Number, type, and capacity of existing facilities issued permits to treat, store, or dispose of hazardous waste.

This would be an indicator for immediate reporting. Coupled with the previously-mentioned enforcement indicator and the below-mentioned new permit indicator the immediate RCRA problems would be addressed.

OSWER Proposal

Number and type and capacity of new facilities issued permits to treat, store, or dispose of hazardous waste.

This would be an indicator for immediate reporting.

OSWER Proposal

Number and type and capacity of new and existing facilities applying for permits to treat, store, or dispose of hazardous waste which are withdrawn or denied

This would be an indicator for immediate reporting.

Comments on "new" facilities indicator

OSW

Permit applications by new facilities are not as satisfactory

for measuring the soundness of new capacity as permitted new facilities would be. RCRA indicators to be tracked will show impacts only over a period of years. The program is not at a stage of implemenation whioch would allow reporting to show immediate, conclusive environmental change

Region I

Permit applications by new facilities are not as satisfactory for measuring the soundness of new capacity as permitted new facilities would be.

Region IX

Because the number of new facilities is still small, the value of this information is limited at present.

Region II

This may not be the most representative indicator as new facilities are a small fraction of the regulated community.

PROMISING INDICATORS REQUIRING FURTHER WORK

Number of threatened aquifers and surface water supplies (and the population served) where the threats from hazardous waste sites were reduced as a result of state and EPA actions under RCRA and CERCLA

This indicator may be more promising from an immediate reporting perspective than it appears on its surface. Along with other component data developed to score sites via the MITRE model this data may be available for some part of the Priority List. We are exploring what data is collected and how that data should (and will eventually) be used to depict the success of the Superfund program. This indicator will require considerable work and definition to clearly depict results in the cleanup area.

Groundwater monitoring is presently required for certain RCRA facilities (primarily those with surface impoundments, those which land dispose, and those which land treat). EPA requires that part of the monitoring data be submitted to the Agency and that other data be maintained at the facility as background information. The extent and quality of the data presently being collected is not clear and, as such, could not be used with confidence. We are examining this possible indicator with a view toward its development.

Number and type of existing RCRA facilities in compliance with: a) interim status permits; and b) final permits

This indicator is discussed in "Indicators for Current Reporting".

Tons of material properly disposed of under RCRA program

There will be no full data set collected which would allow this indicator to be computed because the RCRA Annual Report is proposed to be replaced by an Annual Survey. Some data may be obtained from the Annual Survey which may be useful in extrapolating this information but the use of the Survey for this purpose may have to be explicitly required to assure a data collection designed to provide this data.

MITRE model as a surrogate to characterize extent of cleanup

It has been proposed that change in MITRE score between pre-cleanup and post-cleanup be used as a surrogate of cleanup results. While this approach, in its simplicity, initially appeared promising, further discussion has revealed that this is an inappropriate way to use the model for individual site scoring as cleanup actions at a site may not be reflected in the model. For example, reduction of leachate flow from the site (a yes/no question in the model--is leachate flowing from the site) would not alter the score of the site although it is clearly an environmental result. In addition, re-scoring is highly resource intensive (would require re-development of model data components).

Model scores are not on an absolute scale, there is no "base score" (50, 60, 75) which could be conclusively determined to pose a threat. However, there may be other ways to use the model components in the aggregate or to compare actual site data to arrive at the " Environmental Results" acheived.

We are examining the model to determine whether and how it might be used for environmental results measurement purposes.

We look foreward to working with you during FY'83 to identify and develop the most promising indicators. We would also be interested in identifying what assistance you could provide to help us conduct these activities. Please coordinate with us in developing any future schedules to continue this activity.

cc:
Office Directors
Regional Administrators
Kirby Biggs
Barry Korb
John Wilson

Mr. ROWLAND. Mr. Wise.

Mr. WISE. Thank you, Mr. Chairman.

Mr. Cannon, I have reviewed your report and it is candid. I am impressed by it. It is awfully easy to lay out what is wrong and say this is what needs to be done, A, B, and C. Then the question, of course is, is it going to get done. Really, I guess I am going to be using you as a messenger today. One set of words leapt off the page at me concerning the Construction Grants Program. I understand where you are coming from in terms of what you have just been through, saying that we need to in effect decentralize this some, get it out of the central office, get it out of Washington.

But you say that other Federal agencies have learned this lesson, and for that matter, so has EPA as a result of long experiences with its Construction Grants Program for sewage treatment facilities. In retrospect, it is hard to understand why more conscientious, why a more conscientious effort wasn't made to apply the lessons learned from the Construction Grant Program directly to Superfund. Then Mr. Crampton replied later, "The Construction Grants Program does its oversight job fairly well."

Let me tell you what is happening in my neck of the woods in West Virginia with construction grants in region III and where I think that I certainly intend to ask this committee once it finishes Superfund if it would consider looking at that area. To give you the most recent example of region III and construction grants, we have a project that has been a disaster from the beginning, a sanitary sewer district.

Construction, the highest rate in the State. We have asked region III several times to come in and help with it, divert disaster for everybody. They have avoided that. So finally, I have been working with the Malden Public Service direct and we got them to request region III to provide legal and technical assistance which they can do so they can possibly look at litigation against the consulting engineer. He has now moved to Florida, as a way of recouping some of the losses.

Region III's response was nothing doing. In fact, if we persisted with the request, the threat was implicit we would endanger all West Virginia funding because it seemed to show a pattern of irresponsible grantees. What happens yesterday, I learn that region III has now agreed with the water development authority, our State bonding agency, to put the district into receivership. Totally—of course we were never consulted on that.

I ask you, what possibly jeopardizes funding, both in the bond market and in the EPA framework, more than seeing a district that has just been put into receivership? I guess what I am saying to you is that I think there are a lot of problems in region III.

That is why when I hear—and particularly my experience, and both as a State senator trying to call attention to this and now as a Member of Congress. I do want to say in fairness that the Inspector General's Office at EPA has been very cooperative. But their investigations, their requests, their recommendations in both that district and another one in my congressional district seem to have fallen on deaf ears.

As I say, I am using you to send a message. If we are going to take region III and their handling of the mountain III district as

an example, then I think we have real problems. If you are turning it over now to decentralize administration, to apparently run roughshod, then we have got real problems.

Mr. CANNON. I have taken notes and I will convey the message.

Mr. WISE. I see you have the pen out. I appreciate it. Quite frankly, I am going to have to go to the Administrator on this. I just want you to know it is coming.

Thank you very much.

Mr. CANNON. OK.

Mr. ROWLAND. Thank you, Mr. Wise. I know in the report, there is an excerpt from the report we have on the Superfund that one of the statements said, conflicting goals and perceptions have frequently led to interoffice disputes and seriously interfered with efficient administration of the program. Then Ms. Lavelle testified here on February 24, 1983. She said,"There is tension between Mr. Perry's shop and my shop on a number of issues, approaches and policies." While it is true there may be some dissension between offices and within offices, would you say this might be above the norm that has been taking place?

Mr. CANNON. I couldn't really respond. My instinctive response was it was a little bit above the norm, if not a lot. But since I have only been a Government official for a couple of years and haven't observed these kinds of turf battles before, I am not sure what the norm is. But it seemed a little excessive given what else was going on at the agency, I would say that.

Mr. ROWLAND. OK.

Mr. LEVITAS [presiding]. Thank you, Mr. Rowland. I appreciate your sitting in for me.

I just have one or two, in fact I think just really one last question at this point and we will, without objection, hold the record open for 10 days so that if there is a need for additional questions, they can be submitted in writing and you can have an opportunity to respond in that fashion.

One of the points that your report makes on the management issue relates to the concentration of decisionmaking in the Washington office. We have seen through our other inquiries some of the problems, very serious problems that that resulted in. For example, on page 4 you say, "an unwarranted number of decisions have been referred ultimately to the highest levels, capping a tortuous procedure which slows the program down."

Page 6 you say:

> Regional Superfund managers expressed particularly high levels of frustration with the way headquarters has been operating the program. Regional managers feel under constant pressure locally to take direct action at problem sites. But even though regional managers are on the front line at initiating and supervising cleanup activities, headquarters has lacked confidence in their judgment, considering them too likely to "cave in" to local demands for action? Most participants in the learning process believe headquarters centrist views have been so extreme as to create problems which were avoidable even without the benefit of hindsight.

What is particularly troublesome to me about that, and I think it is fair to say that that is not news to the subcommittee, is that if this administration has emphasized anything with respect to how EPA should manage its affairs, it has publicly stated it emphasized decentralization and delegation.

Yet, that public posture is refuted not only by what we have seen over the months, but by your report. How do you explain the difference between the expressed policy and posture of the administration of delegation and decentralization on the one hand, and the reality of focusing decisionmaking in the harmful manner we have described to the highest levels of EPA for resolution rather than the decentralization?

Mr. CANNON. Of course, we noted this as a problem. We think we have already taken steps to respond to the problem. But the answer to the question about what the administration's view was on decentralization and what the Agency's actions were, I think, is explained in two ways at least. One is that it was a new program, and there was a strong belief on the part of that particular program manager that there should be very strong headquarter's oversight, especially at the beginning, to make sure inconsistent things weren't happening within the regions. I think that is one explanation of it.

Another explanation of it is something I referred to earlier. And this isn't particularly significant. But we viewed the regions as part of the Environmental Protection Agency. I think the administration's general statements and views on decentralization have more to do with the State and Federal role as opposed to the internal role within the Government. As I say, I don't think that is quite as relevant as the first point I made, that it was a new program and there was the need, a felt need to have lots of central oversight.

Mr. LEVITAS. Let me explore that. I accept what you said. But is it the policy of the administration and EPA to decentralize in terms of giving greater decisionmaking responsibility to the regional administrators and regional offices? Or is that not the policy of this administration?

Mr. CANNON. I don't know if I would raise it to the level of a policy of the administration. It is the policy within the Agency as near as I can see to put the authority and responsibility where the action occurs, which is out in the regions. And I think that that is, generally speaking, our consistent view, subject to a number of caveats in terms of program guidance and the fact that we would like to see, and like to have people feel that they can expect the same kind of treatment from one region—I look over to see if Mr. Wise is there—from one region as opposed to another region.

We like to feel that we would be consistent in our approach to problems. So there is the need for some central guidance. But in general it is our view that the responsibility should be where the rubber meets the road, which is in the regions.

Mr. LEVITAS. Well, it is a very important decision that each administration has to make. In fact, I recall during the last administration, a very conscious effort was to give a great deal of responsibility and almost autonomy in decisionmaking to regional administrators and regional offices. I had understood that that was the same, at least expressed philosophy of this administration, even though we saw a lot of evidence to the contrary. And your report seems to document that.

Now, what I am trying to find out, is whether my belief is correct that it is still the policy of this administration to decentralize

to the extent appropriate, and possible, at least to the same extent as the prior administration had in giving responsibility to regional offices and regional administrators, notwithstanding what we have been doing? Is that the policy?

Mr. CANNON. Sure. That is the policy. And in fact, Mr. Ruckelshaus has reiterated that and has taken some pride in the fact of having, as the first administrator, established the regional system. Some think, anyway, that our regions are about as independent as any regional offices in the Federal Government. So he takes some pride in that.

I think that is the continuing Agency policy.

Mr. LEVITAS. Now, perhaps that policy will be implemented.

Mr. Crampton?

Mr. CRAMPTON. If I may add, I spent some time in a region during the period when the previous administration was in office. And there certainly is one significant difference between then and now. That is, the accountability system now has the regional administrators reporting directly to the administrator. Under the previous system, the regional administrators' division directors reported directly to the national program managers. So, I think that is a significant enhancement in giving the regional administrators more power.

Mr. LEVITAS. Yes. Certainly in terms of the organizational chart. If that regional administrator's power, however, requires that it, on even relatively minor issues, has to be cleared through the highest levels in the administration of the Agency, then that is frustrated, even though the organizational chart may give more power to the regional administrator.

Mr. CRAMPTON. That is true. But I think it is also important to point out here that we did state the Superfund program's rationale for following this policy. And it is a consistent one and an appropriate one. Basically, as Mr. Molinari pointed out, there were inconsistencies in implementation among the regions. Some of the materials that were submitted from the regions to headquarters fell short of what was desired. I mean, of course, that there were reasons to have these kinds of controls at least at the beginning. The problem is one of timing. In the end, as more and more pressure was building up on the Agency to operate a responsive program as opposed to a well-controlled program, we had to make that shift. And as an agency we were very slow to do it. The regions were getting more and more frustrated as time went on because of the problems as outlined in the report.

Mrs. JOHNSON. Will the gentleman yield?

Mr. LEVITAS. I will yield.

Mrs. JOHNSON. From your earlier remarks, I would assume that the Agency would have anticipated that at some point it would move from such a centralized mechanism back to a more decentralized mechanism. In reflecting the change in the chart, was the change in the chart and the implications of that change realized in other programs that did not have unique characteristics of being embryonic in their existence?

Mr. CRAMPTON. I think I understand. The Superfund Program had not set a date when it would start to divest itself of major responsibilities. There were a few that were starting to go out to the

regions, but basically there was no overall sense that this would happen within a measurable period of time. On the other hand, every program that EPA has operated has started out being very centrally managed because of the learning curve problem and the need to assimilate all that experience. So what happened with Superfund is not all that inconsistent with what has gone on before. But because the pressure for action was greater here—and results were slow in coming——

Mrs. JOHNSON. Did this change of the regional officials reporting directly to the Secretary increase the independence of the regional offices in regard to other programs?

Mr. CRAMPTON. Yes. What the new reporting relationship period was a sense that they knew that they were responsible for certain outputs to the administrator. When the assistant administrator for water or air, or what have you came down on their backs and said we want you to do "X" for us, the regional administrator could say, but we are supposed to get "Y" for the administrator. In other words, "sorry, lets work it out together, but basically I am responsible to the administrator now."

And so what you have is a negotiated process where both the RA and the AA, the national program administrator were also getting guidance——

Mrs. JOHNSON. So implications for change implied by the chart were realized in other programs and would have presumably ultimately affected the independence and evolution of Superfund?

Mr. CRAMPTON. That is correct.

Mrs. JOHNSON. I was trying to restate what I thought I heard you say. I think we do understand ourselves. I didn't say it very clearly. Thank you very much.

I appreciate your yielding.

Mr. KINGHORN. Mr. Chairman, if I may add to that discussion.

Mr. LEVITAS. Yes.

Mr. KINGHORN. There is a fundamental issue here, something I mentioned before, but just to add: We are operating now on a Superfund budget that was basically constructed 2 years ago within the Agency. The resources and the distribution of the resources beween region and headquarters was basically analyzed and decided by the Administrator 2 years ago. That is when we developed it and submitted it about a year and a half ago. The major difference I see in the tension between the region, headquarters, and this office, particularly stemming from discussions we had again last summer at the budget hearings when the issue was raised about centralizing management was the fact that the statute is essentially again different than nearly any other statute we have in EPA. The regions have been used to working under statutes that after initial development of a program they become implementors and hopefully the States become implementors.

The Superfund statute is quite different. If is, if anything, vague on the role of the States. Other people would say quite clear on the role of the States certainly in terms of funding and grant mechanism, to help them manage. So there is a different relationship there. At least that is the discussions we had last summer. And initial decisions made last summer and the year before was that at the stage we were in the program, there was a concern to have

some kind of central policy and central control on that program. I think Mr. Crampton's right. As that program develops and is developing, that shift is going to be made.

Mr. LEVITAS. We have got a vote beginning and it will be followed by two other votes, reduced to 5 minutes. I just want to make one other observation. Then I think we can release this panel as far as being available at the witness table. I want to get back to the question of centralized versus decentralized management. To put it in concrete real world terms, if that philosophy had been implemented, it would seem to me that a situation such as occurred either in the Dallas lead situation or possibly even the Dow Chemical situation, would have had different results.

Is that a fair statement?

Mr. CANNON. I don't know whether it is a fair statement. I don't think that either of them was necessarily a Superfund problem or perceived as such.

Mr. LEVITAS. The Dallas situation, I think, was.

Mr. CANNON. It is not clear to me what decentralization would have had to do with either of those situations.

Mr. LEVITAS. All right. Well, I appreciate, Mr. Cannon, Mr. Kinghorn, Mr. Crampton, your work and participation in this matter, and your testimony today. As I said, this is the beginning of what I view as phase 2 of our investigations and oversight on the hazardous waste issue, and I think your report was very timely in giving us the opportunity to begin to address this new stage. I appreciate your being here today, and I know you have to leave, Mr. Cannon. It may be useful for Mr. Kinghorn and Mr. Crampton to listen to the testimony of the other witnesses. I am hoping that we will be able to move along very swiftly this afternoon and complete.

Let me make an inquiry. I know Mr. Lucero, you have an appointment at 12:30.

Mr. LUCERO. I need to leave by that time, yes.

Mr. LEVITAS. What about Mr. Hedeman?

Mr. HEDEMAN. At 1:30.

Mr. LEVITAS. At 1:30? I think probably what we will do is try to get through the portion that will relate to your testimony specifically, Mr. Hedeman, and then Mr. Lucero, you probably ought to call and check after you have finished with your appointment and we will see how we are moving at that time. Hopefully we can resolve the whole business today. If not, we will carry it over to a later date.

The subcommittee will stand in recess until the completion of the votes now in process.

[Recess.]

Mr. LEVITAS. The subcommittee will please come to order. The Chair has been discussing with the members of the subcommittee the procedures for continuation of this hearing. As a result of some other obligations which the committee is prepared to accommodate, two of the witnesses, Mr. Lucero and Mr. Hedeman, will not be able to be in attendance at the same time today for this hearing. And because their testimony is very important, and is related one to the other, it is my judgment that we would better serve our purposes by arriving at a time when Mr. Brown, Mr. Lucero, Mr. He-

deman, and Mr. Thomas can all be present at the same time. And therefore the witnesses will be excused today, and we will tentatively reschedule their appearance at a hearing which I think will be Friday morning of next week at 9:30 a.m. Definite arrangements will be made known later.

I do need to see Mr. Hedeman, however, before he leaves, in connection with that.

The next item of business is a report which has been prepared by the staff as an interim status report on the work of the subcommittee in these hearings up to this point, and a brief outline of what we anticipate to be the next items to be looked into. And some of the witnesses that we expect we will be hearing from. It is in no way intended to be an exhaustive list. For example, I am absolutely certain that at the end of these hearings, we will be calling on the new Administrator, Mr. Ruckelshaus, to pretty much wrap up the results of our efforts in this regard. The report which has been furnished to every member of the subcommittee is now to be made public. And it will be the subject of discussion by the members of the subcommittee.

I will also anticipate that either next Friday or at a meeting shortly thereafter, there will be an executive session of the subcommittee with respect to some of the matters contained in this staff report. The staff report I think is a very commendable workmanlike job. I think it captures the essence of what we have found, from where we started to where we are now, and gives a rather clear indication of where we are headed.

Many people have asked me, and I am sure other members of the subcommittee, what is going to be the future of the oversight in light of the change in top management at EPA, and I think this interim report clearly speaks to that issue. And it is pretty clear that the oversight hearings are going to continue for the purposes set forth in the interim staff report. If any member of the subcommittee has any comment, I will certainly be glad to entertain it.

Without objection at this point, the interim staff report will be made a part of the record.

[The report referred to follows:]

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

May 18, 1983

MEMORANDUM

TO: Chairman Elliott H. Levitas

FROM: Bob Prolman

SUBJECT: Hazardous Waste/Superfund Investigation: Update.

As you know, since the latter part of 1981, the subcommittee staff has been reviewing the efforts being made by the U.S. Environmental Protection Agency to carry out the framework of federal laws that address, in whole or in part, hazardous waste contamination of water resources. Included in the review are the 1980 "Superfund" law, the Clean Water Act, the Resource Conservation and Recovery Act (RCRA), and the Hazardous Materials Transportation Act. (The last is administered by the Department of Transportation, and has a significant bearing on the movement of hazardous substances generally, and therefore EPA's "hazardous waste manifest" program under RCRA as well.)

There are three fundamental "oversight" questions that remain the focus of the subcommittee's investigation. They are:

(1) Are these laws adequate to address known and potential hazardous waste contamination problems?

(2) Will these laws effectively preclude the occurrence of similar hazardous waste problems in the future?

(3) Are these several federal statutes and the way they are being carried out encouraging the use of more environmentally sound hazardous waste disposal methods, or are they creating incentives for companies to continue the use of improper and/or illegal techniques?

In the attached interim staff report, I have attempted to provide a more detailed review of the major issues and questions that the staff is continuing to examine.

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Investigation Into

Hazardous Waste Contamination of Water Resources

(Interim Staff Status Report)

(The following information is based on interviews of federal, state and local environmental and law enforcement officials, and individuals in the waste disposal "industry." It is also based on hearing records and various EPA and state agency documents and a limited review of the literature.)

I. BACKGROUND: SCOPE OF THE PROBLEM

Thousands of Sites

There is now considerably more recognition generally in society, and specifically among government and industry officials that the improper and/or illegal disposal of hazardous wastes pose one of the most serious environmental problems facing the nation. Past waste disposal practices have left a legacy of thousands, and perhaps tens of thousands of abandoned, leaking waste dumps all across the country, jeopardizing the quality of much of the nation's ground and surface waters, and thereby the public's health and well-being, as well.

Adding to this problem is the fact that new "discoveries" of abandoned waste sites continue to occur almost monthly, if not weekly. Some of these more recently identified sites are also believed to be even more hazardous than many of those already documented. And underscoring the seriousness of the entire situation is the fact that no one is really sure just how much of the more than 225 million metric tons of hazardous wastes that are generated annually in the U.S. continue to be disposed of illegally or improperly.

Statutory Loopholes (the small generator exemption)

Some government and industry analysts believe that as much as 20 or 30 percent of the toxic industrial wastes generated each year continue to be disposed of in questionable ways due to several factors, such as the existence of loopholes or exemptions in current federal laws. For example, present requirements under RCRA allow generators of small quantities of highly toxic wastes to be exempt from regulation. As a result, toxic wastes from these sources may be dumped into sanitary or domestic landfills

that are not properly equipped to handle toxic wastes, nor designed to ensure that years from now these toxic compounds will not pose new problems.

The Congressional Office of Technology Assessment estimates that as much as 4 million tons of hazardous waste a year escape regulation simply due to this "small generator" loophole, and that this and other loopholes may allow as much as 40 million tons to escape regulation. (Pending legislation, H.R. 2867, would supposedly close some of these loopholes.)

The Wrong Technology

Another factor is the continued use of landfills (toxic waste dumps), rather than recycling, incineration, or other physical-chemical processes that can alter these wastes into more benign forms.

Some in the civil engineering community claim that even the best designed landfills are not foolproof: clay liners can crack over time, and synthetic barriers can be pierced by some of the very chemicals that they are meant to retain due to the changes in chemistry that occur when these chemicals mix with other substances in the ground.

Organized Crime

The continued occurrence of improper dumping practices is also believed to be the result of the presence of organized (and quasi-organized) crime in the waste and chemical waste disposal industry. In the opinion of many state and federal law enforcement officials, this is due to:

-- inadequacies in federal and state laws, particularly with respect to civil and criminal penalties that are too lenient to truly discourage illegal activity;

-- the "pricing-up" of hazardous waste disposal due to the numerous statutory requirements for proper disposal, which in turn, tend to encourage more, not less, illegal and improper disposal;

-- the use of "paper" controls, such as manifest systems to track waste disposal activities, which tend to rely heavily on self-policing, rather than substantive inspections, monitoring, and other audit or integrity tests; and

-- the lack of adequate resources, according to many regulators (including some EPA officials) to ensure substantive enforcement of those few controls that do exist.

The result? For the illegal operator, be it an organized crime operation, or simply a "fast-buck" artist, it appears that the risks are low and the pay-off is high. Supposedly hundreds of thousands of dollars, even millions can be made in just a few months to a year, depending on the chemical wastes involved and the disposal methods used.

For the chemical companies that generate these wastes, however, the benefits may or may not be so rewarding. Some supposedly continue to pay full, or even premium prices, believing that they are contracting for full and proper treatment and/or disposal of their toxic wastes. Others, though, are suspected as having knowingly contracted for disposal of toxic wastes at prices that can not underwrite the costs of proper disposal, or for providing kickbacks of a portion of the disposal price.

II. CAUSES OF THE PROBLEM

The "Responsible Parties"

From a practical standpoint, there are four categories, or groups than can be targeted as being "responsible" for the generation of chemical waste problems:

(1) industries and businesses;

(2) public or government institutions, such as research laboratories, public power plants (nuclear and conventional) and hospitals;

(3) the Department of Defense (DOD), which, while part of the "government", is generally treated separately due to both its size and the rules that govern its operation. (A complicating factor in the DOD situation is that the actual "generator" of the toxic wastes may, and often is, a private contractor that is leasing space on federal property.); and

(4) the waste disposal industry itself, the (legitimate and illegitimate) transporters, recyclers, and treatment, storage and disposal operators.

Approaches for Hazardous Waste Disposal

There are three general approaches that are relied on to dispose of hazardous wastes. One is to simply contract with someone else to haul it away for recycling, burial, or some other form of disposal, such as incineration. Another is the use of "on-site," (as opposed to "off-site") disposal techniques. The third is to simply dump the wastes in a sewer, either legally or illegally.

1. Off-site Contract Disposal

Generally, about 20 percent of all hazardous wastes produced are disposed of off-site, that is, the firm that generates the wastes hires someone else to take it away and dispose of it somewhere else. Usually, these types of arrangements are reserved for those wastes that are the most hazardous, or for which there is either little or no recycling value to the generator. In still other cases, it is because the quantities of waste are too small for the individual generator to recycle the wastes econcomically.

2. On-site: Pits, Ponds, and Lagoons

Most of the remaining 80 percent is usually disposed of, or handled by the generators on-site. Many companies do this by treating, and/or disposing of their toxic wastes in "pits, ponds, and lagoons." Some experts believe these methods to be major causes of ground and surface water pollution problems due to the absence of liners or other leak detection, retention and treatment systems.

3. Sewer Dumping and Industrial Pretreatment

Finally, some companies find it convenient to dispose of their hazardous wastes by simply dumping them in the local municipal sewer. Some do this covertly, utilizing the classic, illegal midnight dump, and some do so overtly, through formal arrangements with the local government or sewerage authority.

In this later situation, these companies are supposed to adhere to certain waste discharge controls, or "pretreatment" standards (called for by the federal Clean Water Act). However, past subcommittee reviews have shown that:

(1) many if not most communities lack substantive standards, particularly for hazardous wastes, due to delays by EPA in carrying out the Clean Water Act's Pretreatment Program requirements; and

(2) few if any communities really have the capability to monitor who is actually dumping what chemicals into the sewers.

The results? Sizable quantities of extremely hazardous substances have on occasion been dumped into local sewer systems, triggering explosions that cause millions of dollars of damage, as was the case in Louisville, Kentucky, a couple of years ago. Such actions have also disrupted the operation of the sewage treatment plants that lie at the end of these pipes, thereby contributing to serious water quality violations, endangering those who work at these plants, and causing costly and hazardous cleanup problems.

Any effort attempting to address the hazardous waste disposal problem, and the threat it poses to the nation's water quality and the public's health must necessarily examine not only all of the various responsible parties and the several federal (and state and local) laws that are intended to address these different facets of the problem, but the practices and procedures companies employ for handling and disposing of their wastes, as well.

III. THE SUBCOMMITTEE'S INVESTIGATION

Examination of the Superfund Law

Our efforts to date have focused primarily on the Superfund law and the EPA's efforts to (1) cleanup identified abandoned hazardous waste sites and (2) to carry out the enforcement provisions of that law. Among the questions that the subcommittee must eventually address itself to (assumably in a report) are:

(1) Whether there are statutory requirements and/or administrative policies, practices and procedures that effect the government's--EPA, the Justice Department, DOT, etc.--ability to function effectively and achieve the objectives of the law, or whether amendments to these statutes, and particularly the Superfund law, are needed.

(2) Whether the Superfund law's enforcement provisions--both civil and criminal--are being fully and effectively carried out (as well as those of the other statutes involved), and whether the statutory sanctions are adequate in nature from a punitive and/or a "deterrent" point of view, both in terms of their form, and in terms of the way they are being applied.

(3) Whether adequate efforts have been, or are being made to obtain and/or recover the full costs of cleaning up hazardous waste sites from responsible parties including the government's "overhead" costs, i.e., fund expenditures to assess the hazard posed by a site and to identify the responsible parties.

(4) Whether the fund, and the existing sources and amounts of revenue for it, particularly the tax on oil and chemicals, are adequate to address both known and potential hazardous waste sites and chemical spills.

(5) Whether adequate resources, both in terms of funds and qualified personnel, are authorized and being made available to this program to ensure its proper and effective execution.

(6) Whether the existing body of law, both federal and state, is adequate to ensure that victims of hazardous waste pollution are adequately compensated for health and other damage resulting from hazardous waste sites or spills.

Compensation of Victims

With respect to this last point, the compensation of victims, there is considerable controversy. A provision that would have allowed victims of hazardous waste incidents to be compensated by the Fund was dropped prior to the Superfund legislation being adopted in 1980. In its place, Congress required that a study be done by the American Bar Association and several other legal groups.

The study was "...to determine the adequacy of existing common law and statutory remedies in providing legal redress for harm to man and the environment caused by the release of hazardous substances into the environment." (Section 301(e)(1).) The results of that effort indicate that existing legal remedies are significantly deficient. (This same conclusion was rendered by an earlier study done for this subcommittee by the Library of Congress in 1978/79.)

The bottom line is that under Superfund, the federal govenment will pay for damage to trees, etc., but not for damage to people. Consequently, if this situation is to be changed, further legislation will be required.

Adequacy of Other Federal Laws

In addition to the forgoing, the subcommittee's investigation is also examining the adequacy of the other laws mentioned above, the Clean Water Act, the Hazardous Materials Transportation Act, and the Resource Conservation and Recovery Act, both with respect to how effectively they are being administered and the extent to which the enforcement of those laws work to encourage proper disposal of hazardous wastes.

Of concern is that the nation may spend billions of dollars to clean up thousands of abandoned waste sites only to find that hundreds, if not thousands more have been created in the interim due to problems, or weaknesses, in current federal law and/or its administration. Some of the issues or questions that must be addressed here are:

(1) Is the current RCRA "cradle to grave" manifest system for tracking hazardous waste a viable regulatory mechanism, or simply another federal paper shuffling process that fails to regulate those who would operate outside of the law in any event? (In fact, some have suggested that this new manifest system may even facilitate improper disposal activities by helping to "paper over" illegal disposal operations.)

(2) Does the RCRA manifest system conflict, complement, or simply ignore the Hazardous Materials Transportation Act's manifest and related requirements? (i.e., duplication and/or confusion?)

(3) Are management and technical controls and safeguards in urban wastewater treatment systems adequate to detect and/or prevent (or at least minimize) illegal and/or clandestine dumping of toxic wastes into municipal sewer systems?

(4) Are regulations governing (a) the quantity and physical-chemical nature of what may be disposed of in both hazardous waste and domestic sanitary landfills, and (b) the actual operations of these landfills, adequate to ensure that the leachates from these sites do not contaminate ground and surface waters?

Other Issues:

In addition to these matters, there are several other concerns that are continuing to be examined. These include:

-- Political manipulation of the Superfund program by EPA (and possibly other government agency) officials;

-- Possible "sweetheart" deals between EPA and hazardous waste site "responsible parties" -- the chemical and other companies responsible for the toxic waste sites;

-- Undue influence by industry officials and other outside agents in EPA regulatory matters;

-- Excessive "favoritism" towards industry by EPA regulators;

-- Changes in EPA policy concerning "risk assessment";

-- The integrity of EPA Superfund program files.

IV. RECENT OVERSIGHT HEARINGS: 1982-1983

The several days of hearings held during 1982 and earlier this year, while preliminary in nature, have nonetheless surfaced information that indicates that the Superfund program has been, and continues to be a rather troubled program.

Among the factors that have and continue to contribute to the program's problems are:

(1) Conflicting or ambiguous provisions in the Superfund statute itself, and the way these are being interpreted (e.g.

whether to clean up first or whether to negotiate or litigate);

(2) The EPA's policies with respect to how stringently the law's enforcement and "punitive" sanctions should be applied;

(3) Policies that reflected the former EPA Administrator's apparent intent to terminate the tax that generated the Superfund law's Trust Fund;

(4) The absence of clear lines of responsibility and authority with respect to the management of the program and the handling of individual cases (everybody seems to be in charge, but no one appears to have the authority to make decisions); and

(5) Inadequate resources in terms of the numbers and types of staff necessary to effectively handle assigned work loads (capable of "holding actions at best" according to at least one agency regulator, and "reaching crisis proportions" according to another).

Political Manipulation

Disclosures made by various EPA officials in their testimony to this and other House subcommittees over the past several months have also indicated that the Superfund program, (and apparently the entire agency) has been subjected to some degree of political manipulation ranging from employee "hit lists" to the utilization of an "election tracking" system for controlling the flow of Superfund cleanup dollars during last fall's national elections. Some of these matters have now been referred to the Department of Justice (DOJ) by the Agency itself, although just what, if anything that DOJ is doing about this is not known.

This testimony, along with other documents and information obtained by the Subcommittee to date, also suggest that many of the agency's top, politically appointed managers (most of whom have now left or been fired) apparently preferred to coddle industries rather than regulate them. Indeed, it appears that agency formulation of policy, as well as decisions on whether to "litigate or negotiate" with those responsible for these abandoned chemical dumps, were subject to undue degrees of influence from industry. Two incidents discussed during the subcommittee's recent oversight hearings provide some insight on this apparent bias, or favorable attitude toward industry.

Dow Chemical and the Draft "Dioxin" Report (Favoritism Towards Industry)

The first incident involved a decision by former EPA Deputy Administrator, Dr. John Hernandez, to make a copy of an internal, agency staff draft report available to officials of the Michigan based Dow Chemical Company.

According to testimony on March 16, 1983, the draft report identified Dow as the source of the highly toxic compound, dioxin, and that discharges of this chemical into area waters were contaminating fish, thereby making them unfit for human consumption. According to testimony, no other company was provided a similar opportunity to review the draft, and allegedly, changes were made in the report to accomodate Dow's concerns, including the removal of some references to Dow.

Dr. Hernandez, in his testimony to this subcommittee on March 16, 1983, denied that he instructed agency staff to change the report. Testimony by other EPA (Region V) officials before the Energy and Commerce Oversight Subcommittee on March 18, 1983, was inconsistent with Dr. Hernandez's testimony concerning the deletions and changes that were made in the report. On April 19, 1983, the matter of this conflicting testimony by EPA officials was referred to the Department of Justice by this subcommittee for further consideration.

Risk Assessment Policies - Dallas Lead

The second incident, also involving the EPA Deputy Administrator, concerned a pending voluntary cleanup in June 1981 of lead contamination from three smelting plants in Dallas, Texas, and an apparent change in EPA "risk assessment" policy from one of acting on "potential threats" to the environment and the public's health, to one of essentially requiring "body counts."

For the past several years, EPA's policies regarding risk assessment and the making of decisions on pollution abatement matters -- whether to litigate, negotiate, issue administrative orders, etc. -- have generally been oriented toward preventing potential harm to both people and the environment. Delaying cleanup until actual harm, or "body counts" were documented was not required, in part because it was felt that the values inherent in such an approach were highly objectionable, and in part, because of the difficulty in proving cause and effect relationships in a given situation (i.e., that a given source of pollution causes a specific environmental or public health problem such as cancer, birth defects, etc.).

Often, these risk assessment policies simply reflected the language of the particular law that prompted their development. For example, Section 104 (a) of the Superfund law makes reference to "...a substantial threat..." of a hazardous substance spill as being adequate for justifying action. (Emphasis added.) Similarly, Section 106 of that same law authorizes law suits and administrative orders for cleaning up waste dumps when it is determined "...that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance..." (Emphasis added.)

In both instances, the EPA is authorized to act without having to wait for the disaster to occur. The simple threat or possibility that one might occur is adequate. However, this did not seem to be the case in the Dallas, Texas lead contamination case.

In this instance, EPA's Region VI officials had worked out an agreement with the officials of at least one of the three companies involved, whereby they would voluntarily cleanup "hot spots" of lead contamination -- that is, areas of very high lead contamination -- and without cost to the federal government. One of these areas was a children's playground.

When Region VI enforcement staff advised the EPA headquaters Washington office of this proposed arrangement, they were precluded from allowing the voluntary cleanup to go forward.

In his testimony before the Subcommittee on March 16, 1983, Dr. Hernandez advised that he had decided that the EPA should have more information on the problem, particularly the levels of toxic lead in the blood of children and others, before cleanup should go forward. Noted the former Deputy Administrator: "...we did not have the kind of information as to exposure to particularly children, but individuals in that area as a whole. What we really needed was a sampling program where we went out and actually measured people...Blood levels in children, particularly."

In effect, it appears that Dr. Hernandez felt that it would be inappropriate to allow any of the lead smelting companies to go forward with a voluntary cleanup effort until more definitive information on lead poisoning -- a body count -- was available. Not only was this not in keeping with the general thrust of past EPA policy regarding risk assessment and cleanup actions, but it was apparently contrary to the advice of virtually all of the EPA Region VI officials who were involved.

Testimony received by the Subcommittee on March 24, 1983, from EPA Region VI officials also conflicts with Dr. Hernandez's claim that he did not know of any specific cleanup agreements by at least one of the companies involved. This latter matter was also referred to the Department of Justice on April 19, 1983 for further consideration.

V. INTERIM FINDINGS

Collectively, these disclosures and other information continue to suggest that some of the negotiated cleanup settlements between the agency and the responsible industries may well prove to be, if not "sweetheart deals," decisions that give short shrift to the public's trust and the public's fisc, and even shorter shrift to the environment and the public's health.

Further, the delays in obtaining access to the EPA's Superfund enforcement files, and the events of the past several months, not the least of which was the discovery of paper shredders in the agency's Superfund offices in early February this year, have also raised serious questions about the integrity of those files. This last is a question that will probably never be satisfactorily answered.

Nonetheless, the Subcommittee's review of the Superfund program and the EPA's efforts to carry it out, have already provided enough information to indicate that a number of changes in the law, as well as the agency's management policies and practices, will be necessary if the hazardous waste problem is to be realistically addressed in the years ahead. Among the more significant disclosures:

-- The 418 hazardous waste sites proposed by the EPA on December 20, 1982, as the list of priority sites to receive attention under the Superfund program will not be fully cleaned up by the end of this century. (The proposed list is now 419.)

-- EPA officials have testified that many sites that are not on the proposed priority list are considered to be more hazardous than some of those that are on the list.

-- The present $1.6 billion Superfund will, at best, facilitate the cleaning up of approximately 170 sites. Even with EPA's assumption that another 170 sites will be cleaned up at the expense of the companies that created them, the "responsible parties", some 79 additional hazardous sites on the EPA's interim priority list will not be addressed under the Superfund program due to a lack of funds.

-- Thousands of additional sites have yet to be fully assessed as to the degree of hazard they pose to water quality and the environment in general, and to the public's health.

-- As many as 2,000 additional sites are considered by EPA to pose potentially significant problems (out of some 14,000 estimated sites overall). However, these may never be addressed unless the Fund is extended in some fashion.

-- The law's requirement that the states provide 10% of the costs of cleanirg up a site (50% if it is a publicly owned site) appears to be a significant factor in delaying or constraining the cleanup of many sites, due to the inability (or unwillingness) of many states to provide their

share. In at least one major instance, at the Seymour, Indiana site, this factor precluded use of the Fund altogether, seriously limiting the ability of federal regulators to address problems at that site.

-- Reduced levels of EPA staffing and constant reorganization of responsibilities and roles within the Agency, particularly enforcement, have adversely affected the Superfund program's effectiveness.

-- The moving of the Superfund legal enforcement staff from the Superfund "program" technical offices to the EPA Office of Legal and Enforcement Counsel (OLEC) -- the result of an earlier agency-wide enforcement staff reorganization -- has led to management inefficiencies, duplication of effort by EPA and Department of Justice attorneys, and confused lines of authority and accountability. Line and staff functions have become so intermingled that they are virtually indiscernible. This in turn has impeded decision making, and hence, delayed toxic waste dump cleanup efforts.

-- While EPA headquarters senior staff have touted decentralization and delegation of responsibilities to state governments as the key to more effective and more efficient management, they have simultaneously and systematically moved to centralize Superfund program controls and decision making to the agency's headquarters, and have seriously limited the ability of EPA regional officials to make any decisions, or utilize contract resources. This has contributed to delays in the cleanup and enforcement aspects of the program.

-- EPA policies toward the program have been oriented towards "negotiating first and litigating second," and appear to be totally absent of any strong punitive orientation. This is exemplified by a lack of any criminal enforcement efforts involving abandoned waste sites in the program's first two-plus years of operation, and no utilization of the law's treble damage provisions.

-- There has been a tendency for EPA and DOJ to spend long periods of time in negotiations with responsible parties, negotiations that result not in the cleanup of a waste problem. but simply containment of the "existing mess" and, where necessary, arrangements for substitute sources of

potable water supplies. (Continued adherence to this type of a policy or approach does not necessarily eliminate further problems from such sites. It does, however, virtually guarantee that America will be pockmarked with numerous "dead zones," places that may never be usable, lifegiving, and habitable for generations to come.

-- The Agency has managed the Superfund program with an approach that emphasized conservation of Fund monies. Administrative policies and procedures stemming from this approach led to excessive reviews and delays in cleaning up toxic waste sites.

RECOMMENDATIONS FOR FURTHER INVESTIGATION AND HEARINGS

The EPA's and Department of Justice's refusal to cooperate with the Subcommittee's inquiry into the Superfund program and the overall hazardous waste problem has set us back several months in our efforts. However, the events of the past several weeks -- the firing and/or resignation of most of the top EPA staff, the President's nomination and confirmation of Mr. Ruckelshaus as the new Administrator, and most significantly, the signing of the Memorandum of Understanding with DOJ and the White House on February 18, 1983, (and the revisions to it on March 22, 1983) providing the subcommittee with total access to the EPA Superfund enforcement files -- should facilitate our efforts to continue with our review of a number of Superfund cases.

Accordingly, it is recommended that the subcommittee continue with its investigation of the hazardous waste pollution problem by focusing on the following Superfund program areas, or cases.

1. Seymour Recycling Corporation, Seymour, Indiana. This case involves one of two early settlements made by EPA with industry under the Superfund program. The site contained some 60,000 drums of chemical wastes and hundreds of thousands of gallons of "bulk" chemicals in storage tanks. Surface and groundwater pollution is involved. Indiana could not come up with its matching share, as required by federal law, and therefore, the Superfund's monies could not be used to cleanup this site.

EPA's initial attempts to negotiate with the approximately 360 companies involved floundered for more than a year. Then, in October of last year, the Agency agreed to settle with 24 major U.S. corporations that were responsible for more than 50 percent of the wastes at this site. However, EPA agreed to let these

companies pay only 25 percent of the estimated $30 million in cleanup costs, and released them from any further liability stemming from this site.

Subcommittee staff have examined a substantial number of EPA files pertaining to this case. Interviews of those involved, as well as reviews of additional files are still underway. Several days of hearings on this site could possibly be held by late June of this year.

2. Bridgeport Rental & Oil Services, Bridgeport, N.J. This case involves an old bankrupt waste oil recycling facility that allegedly has been the site of considerable illegal hazardous waste disposal activities and surface (and possibly ground) water problems. Records that would have identified who was making deliveries to the site were stolen just before federal authorities moved to obtain them in early 1981.

EPA has since settled with the owners for $25,000. Cleanup may cost anywhere from $10 million to as much as $30 million. Yet EPA officials, due to a lack of resources, were unable to followup on prior leads that might have identified some of the responsible parties. Somewhat belatedly, efforts to do so are now underway.

This case was one of the initial sites being investigated by the subcommittee staff last fall. Our review of this matter stopped when the subcommittee was precluded from examining the EPA's enforcement files. Three or four weeks of additional investigation will be necessary prior to a hearing on this site. Additionally, field work, and subsequent hearings on this matter could be combined with the following subject matter.

3. Organized and quasi-organized crime activities. Efforts by the Pennsylvania Attorney General's office and the Philadelphia District Attorney's office over the past several years have led to the indictment and prosecution of a number of individuals involved in hazardous waste/Superfund cases. Additionally, some work being done by the New York State (Legislature) Select Committee on Crime in conjunction with the U.S. Attorney in New York, have also led to some significant disclosures concerning hazardous waste disposal and cleanup activities by organized and quasi-organized crime in the northeast part of the country.

A review of some of the past and present work being done by these entities would provide insights to certain problems in the hazardous waste disposal/water pollution area, including:

(1) deficiencies in the Federal Hazardous Materials Transportation and RCRA statutes, particularly with respect to "manifest" requirements for tracking interstate waste disposal activities;

(2) shortcomings in both statutory and administrative sanctions and criminal and civil penalties presently contained in federal hazardous waste laws, and the problems these pose to federal and state regulators; and

(3) deficiencies in the licensing and regulation of hazardous waste transporters, recyclers, and disposers, that make it easy for illegal disposal operations to continue.

Several additional weeks of work would be required prior to a hearing being held on this matter.

4. Containment of waste site problems v. real cleanup. As noted previously in this interim status report, there appears to be a tendency or trend in the Superfund program to select groundwater cleanup remedies that contain the waste chemicals at a site, rather than actually clean them up.

There are several reasons for this:

(1) The Superfund law's requirement that solutions be cost-effective.

(2) The so-called Superfund balancing requirement, a statutory provision requiring that cleanup solutions be selected with consideration of the other needs -- other waste site cleanup efforts and spills of chemicals -- that must be addressed with remaining Superfund monies.

Because "contain and monitor" solutions may, in the long run, not be real solutions, and the fact that several sites appear to be headed this way, such as the Seymour site in Indiana, the PAS-Oswego, New York site (on which the subcommittee received testimony in July 1982), and the Homestake Mining site in New Mexico, some consideration should be given to holding several days of hearings on this issue.

One approach would be to have two or three of these cases discussed by those directly involved during one or two days of hearings. This could be followed by another one or two days of hearings during which technical experts involved in designing Superfund solutions could provide the "Pros" and "Cons" of this approach. Finally, those involved in the waste disposal industry, the actual contractors, cleanup companies, engineers, treatment equipment manufacturers, and others could be called in. Preparations for hearings of this type would require approximately six to eight weeks.

5. Victim Compensation. As noted in this memo, this remains a significant and controversial problem area. However, the extent to which it manifests itself in different cases varies, due to the "immediacy" of the threat actually posed to area residents, both in terms of physical exposure to the wastes and exposure through drinking water and/or air pollution. An

appropriate case (or cases) illustrating this problem should be selected for review and hearings. About four weeks of preparation would be necessary.

6. Toxic Waste Sites: Department of Defense. Section 303(c) of the Superfund law requires that anyone having knowledge of inactive or abandoned waste sites notify the EPA of the existence and location of that site, along with any other information about the types and amount of waste that are known or suspected as being at that site.

In response to this requirement, according to EPA data, the Department of Defense identified approximately 724 sites located in 49 states (Nevada excepted) and 2 territories (Puerto Rico and Guam). Interestingly, though, it appears that the list is not complete.

During the past several weeks there have been disclosures of several abandoned waste sites that contain hazardous wastes in the Dallas-Ft. Worth area of Texas. Apparently these sites, while known to DOD (and their contractors), were not previously identified to the EPA, raising questions about how many other situations similar to this one might exist around the nation.

Additionally, the Department of Defense (or their contractors) have been identified as responsible parties at a number of Superfund sites on the national priority list.

Staff level inquiries are now underway regarding this matter. However, it is expected that several weeks of additional work will be required prior to the holding of any hearings.

VI. PROPOSED SCHEDULE OF HEARINGS

Based on all of the forgoing, and given present staffing levels and assignments, it is recommended that consideration be given to tentatively scheduling hearings as follows:

1. Mid-June, 1983: Victim Compensation.

2. Late-June/early-July, 1983: Seymour Recycling/ Chemical Waste Management, Inc./Chem-Dyne.

3. Mid-July, 1983: Department of Defense waste disposal issues.

In addition to the forgoing, it is expected that other hearings in both Washington and the field will be scheduled over the remainder of this year. Possible field sites and subjects include:

-- New York City: A review of the Bridgeport, New Jersey case and the roles/influence of Organized Crime and fast-buck operators in the hazardous waste disposal industry in New York, New Jersey and Pennsylvania areas.

-- Chicago, Illinois: A look at illegal/improper dumping of hazardous wastes in the metropolitan area of Chicago, including a review of recent disclosures of hazardous wastes in residential neighborhoods, and the alleged illegal disposal of hundreds of thousands of gallons of toxic chemicals in a local landfill.

-- Boston, Massachusetts: A look at some pending cleanup cases and a success story -- a site that has been cleaned up. Also, some innovations in regional approaches for strenghening the manifest system for tracking the transportation of hazardous wastes from cradle to grave.

VII. FUTURE WITNESSES

In the months ahead, it is expected that numerous individuals will be called upon to appear before the subcommittee so that each of the various facets of the hazardous waste problem may be examined. Included will be representatives of companies that generate hazardous wastes and that have been involved in some of the sites the subcommittee is investigating, along with those who are actually engaged in cleaning up these sites.

It will also be necessary to call upon governors and state agency officials along with the various technical, scientific and medical experts to shed some light on the problems these parties face in their efforts to address the hazardous waste problem and assess the harm these toxic dumps pose. Victims of these sites, the citizens that live on or near abandoned toxic chemical sites, will also be called in to provide some insights to the health and economic problems they face, and the difficulties they encounter in their attempts to obtain legal and medical help.

For the Subcommittee's investigation to be complete, however, it will be necessary to understand how and why various EPA policies were developed; policies concerning how the law's enforcement requirements were to be carried out, and the way in which management decisions were designed to reflect and carry out these policy decisions. Answers to these questions will in turn assist the Subcommittee in its analysis of the statute's provisions and in making recommendations.

To this end, it will be necessary to call upon many of the agency's former, as well as present, officials. Accordingly, it should be expected that the following individuals, among others, will be called to appear, or reappear, before the subcommittee, possibly repeatedly in the months ahead:

-- Anne M. (Gorsuch) Burford, former EPA Administrator;

-- Robert M. Perry, former EPA Assistant Administrator and General Counsel;

-- Rita M. Lavelle, former EPA Assistant Administrator for Solid Waste and Emergency Response (OSWRS), the office that is responsible for carrying out the Superfund and other hazardous waste laws.

-- Mr. James Sanderson, a Denver, Colorado attorney, who had his name withdrawn from nomination for a top EPA policy position due to protracted investigations by the Justice Department and several Congressional committees and subcommittees for conflicts of interest during his work as an EPA "consultant." Among Mr. Sanderson's clients: Chemical Waste Management, the company that is now cleaning up the Seymour, Indiana site.

-- Mr. Chip Wood, former chief of staff to Rita Lavelle, and the author of the words: "He is systematically alienating the primary constituents of this Administration, the business community," that were contained in the infamous "Rita Lavelle Memo."

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Mr. LEVITAS. The gentleman from New York.

Mr. MOLINARI. Yes, Mr. Chairman. I would like to compliment staff on the lengthy report. I think it points out and highlights the more serious problems we are going to be confronted with. It certainly reflects an ambitious agenda for this subcommittee, in keeping with the chairman's normal schedule. I haven't been able to review the report in detail, but from what I have seen, I am very much impressed with it. I think some of the areas that are of deep concern to me are the Department of Defense facilities. I have been studying one problem that has existed in the Fort Worth area in connection with a defense facility. This facility is owned by the Air Force and run by General Dynamics. There is very serious concern on my part as to any possible threat to the health and well-being of the residents of that area.

I must say that in this case we have had excellent response from the officials at the Environmental Protection Agency, from the regional offices and from the National Environmental Investigative Center, the Texas Water Commission and others. I am also very interested in the region that I represent, and the fact that this committee will be looking at the impact of organized crime and its role in this very critical area, because we spend an awful lot of time trying to assess what EPA is doing or is not doing in trying to clean up these waste sites after they are found.

I think greater emphasis has to go to the source of the dumping. We know that organized crime is involved. I am hopeful that we will be able to find some of the answers to that vexing question, Mr. Chairman. Thank you very much.

Mr. LEVITAS. Thank you very much, Mr. Molinari. I, too, want to commend the staff for the fine work they have done, and take this opportunity to commend you for your diligence from the very beginning. As we enter phase 2 I know that the effort and the cooperation which has marked our work up to this point will continue.

Does any other member of the subcommittee have any comment to make at this time? If not, the subcommittee will stand in recess subject to the call of the Chair.

[Whereupon, at 12:38 p.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

HAZARDOUS WASTE CONTAMINATION OF WATER RESOURCES

(EPA Policies and Management Practices for Enforcing the Superfund Law)

FRIDAY, JUNE 3, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT,
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to call, at 9:48 a.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. LEVITAS. The subcommittee will please come to order.

This morning the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation continues with its inquiry into the matter of hazardous waste contamination of this Nation's water resources, and the EPA's efforts to implement the 1980 Superfund law.

Last week we heard testimony from officials of the EPA Office of Policy and Resource Management concerning that office's recent report on the problems that were impeding the EPA's efforts to clean up some of the thousands of abandoned toxic chemical dumps that exist all over the country.

Unfortunately, we have learned from both the report and the testimony we have received that the EPA has been seriously impeded in its efforts to address the hazardous waste problem due to questionable or conflicting management goals and objectives, and organization and resource problems.

It is the purpose of this morning's session to continue with our review of that same report and the several issues it raises. Our witnesses today are those officials who have been directly responsible for carrying out the Superfund law and the other hazardous waste statutory requirements that the Congress has enacted over the past several years.

It is also our purpose carefully to review the record of what has transpired over the past several months so that the members of this subcommittee, and ultimately the Congress and the general public, can have a full understanding of what needs to be done to ensure that we will in fact clean up the thousands of abandoned hazardous waste sites across the country, and that we will know that we are truly protecting both the Nation's water resources and the public's health.

Ultimately, we must have more than allegations and theories on which to base our decisions here in Congress about what must be done.

If the problems lie with current EPA policies, then the policies must be changed. If the problems stem from regulations, then the regulations must be changed. And if the difficulties are due to deficiencies and ambiguities in the laws that Congress itself has enacted, then indeed, the laws must be changed.

But we will only be able to make informed judgments about what must be done by obtaining a candid and thorough understanding of what has gone on, why it occurred, and possibly most importantly, why it was allowed to occur.

I should make just two other observations at this point.

Congressman Molinari one time commented to me that it seems like every day you pick up the newspaper and there is another toxic waste problem. I heard yesterday about the situation in Newark, NJ. That is in the middle of a very large populated area with apparent levels of dioxin far in excess of those found at Times Beach. It has gotten to the point where one must—I almost hesitate to look at the morning newspaper or morning television programs to find that there has been another serious and frightening to the public, and to many of us, situation of this sort.

I think that raises the sense of urgency about what we are doing and what EPA is doing. I would also comment that I think yesterday's vote in the House of Representatives quite apart from being a specific funding measure for EPA, sends a signal I hope that will be understood at EPA and the administration, that the public and Congress are very concerned about this and want to provide those resources that are necessary to get this job done because of the threatening nature of what is unfolding before our very eyes.

Before I call upon the witnesses, I would like to inquire whether my colleague, Mr. Molinari, has an opening statement.

Mr. MOLINARI. Thank you, Mr. Chairman.

I didn't intend to make a statement but I would like to pick up on what you have just said. Yesterday when the appropriation bill was on the floor, I spoke on the House floor and directed my attention to the serious question of prevention, enforcement and control because it has been my observation and I guess almost everyone else's that some of the most costly dump sites in terms of cleanup efforts could have been averted with the expenditure of relatively small amounts of funds.

I don't think that Congress or EPA for that matter has given enough attention to that area. For example, look at Times Beach where we spent over $30 million in one buy out, and where the total cost just for remedial work will probably exceed $100 million. The information I have received indicates that for less than $100,000 dioxin could have been legally disposed of.

So I think that rather than wrestle with the serious problem of how we clean up a particular site and how costly it will be, indeed we are going to have that problem anyway, we should be looking toward innovative programs that can be created. Of course the major portion of the additional funds that were voted by the House on the Wirth amendment yesterday were added to those areas of abatement, control, and enforcement.

I would like to see the new Administrator give us ideas on how we can actively prevent future dump sites from occurring wherever possible rather than looking at them after the fact. That is all I have to say, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Molinari. Does any other member of the committee have an opening statement?

Dr. Rowland?

Mr. ROWLAND. Thank you, Mr. Chairman.

Although in my district in Georgia we have not discovered any dump sites, there are a lot of comments from the people concerning the toxic waste sites we have in the country. I just want to make it a matter of record, that this exists in my district, and the great concern that the people have. They talk about the loss of credibility of the EPA, too.

I just wanted to make this a part of the record, Mr. Chairman. Thank you.

Mr. LEVITAS. Thank you, Dr. Rowland.

If there are no other opening statements, we will proceed with the testimony. I believe that everyone but Mr. Thomas has previously been sworn before this subcommittee. Am I correct?

I believe I am.

If you would raise your right hand then, Mr. Thomas.

[Witnesses sworn.]

Mr. LEVITAS. Thank you very much.

We are very pleased to have with us today Mr. Lee M. Thomas, Acting Assistant Administrator, Office of Solid Waste and Emergency Response, accompanied by Mr. William Hedeman, Director of the Office of Emergency and Remedial Response, and Mr. Gene Lucero, Director of the Office of Waste Programs Enforcement.

Also with us is Mr. Michael Brown, Director of the Office of Enforcement Counsel, and he is in the Office of Legal and Enforcement Counsel.

We are very pleased to have you here today because I am convinced that you can be extremely helpful to this subcommittee in unfolding and unravelling some of the mysteries and questions that still surround the events of recent months.

Thank you for your participation and, Mr. Thomas, why don't you begin. I believe you have a statement and you may proceed as you so desire.

TESTIMONY OF LEE M. THOMAS, ACTING ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY WILLIAM N. HEDEMAN, JR., DIRECTOR, OFFICE OF EMERGENCY AND REMEDIAL RESPONSE, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE AND GENE A. LUCERO, DIRECTOR, OFFICE OF WASTE PROGRAMS ENFORCEMENT, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE; AND MICHAEL A. BROWN, DIRECTOR, OFFICE OF ENFORCEMENT COUNSEL, OFFICE OF LEGAL AND ENFORCEMENT COUNSEL

Mr. THOMAS. Thank you, Mr. Chairman.

I do have a written statement which I submitted. I would like to submit that for the record and I would like to summarize that for you in my opening comments.

Mr. LEVITAS. Without objection your entire statement will be made part of the record and you may proceed as you so desire.

Mr. THOMAS. Thank you, sir.

I appreciate the opportunity along with my colleagues to appear before your committee. I am Lee Thomas, I have been at EPA for the past 3 months serving as Acting Assistant Administrator for Solid Waste and Emergency Response as well as Acting Deputy Administrator for the Agency.

During that period of time, I have largely devoted my efforts in two areas, program review and program management, specifically concentrating on those programs in the area of solid waste and emergency response, the Superfund Program and the RCRA or Hazardous Waste Regulatory Program.

I would like to talk with you a little bit about my experience as far as program review and also my experience as far as program management is concerned today and some of the things I tried to do and intend to do in the future in that position.

I am concentrating on both those programs as I said.

First, as far as the hearing you had last week and the study that is the subject of our discussions today, I found that study and that study process helpful. It happens to be one of a number of studies that have been provided to me since I have been there. As a matter of fact I find numerous people who are interested in the study and I have used their results and their input as best as possible both within the Agency and outside of the Agency.

We have a variety of sources for input.

I have found as far as those two programs are concerned we have to bear in mind we are dealing with a complex subject and complex problem. I find that oftentimes we are regulating almost ahead of science as far as the toxic waste is concerned and as far as the cleanup is concerned. Exactly what the health effects of particular chemicals are, are unknown in some cases.

Basic assumptions have to be made. I also find that we have major intergovernmental issues which we have to address in both programs, Federal, State, local, and interaction with private sector. We have major problems associated with proper roles for each of those in implementing these programs.

Second, I found there are major technical, complex technical issues to be dealt with. Here again we are almost ahead of our engineering science in trying to come up with solutions to major ground water problems, solutions to disposal of toxic waste. We are cutting new ground every day in how we deal with this problem.

Finally, I find that we are also dealing with major precedent setting motions as far as the legal authorities that we have particularly as it relates to the Superfund Program. So it is a complex issue and we are breaking new ground in each of these areas every day.

Additionally, I found both programs, particularly Superfund, are new programs, new in the sense of Federal programs, new in the sense of the actors implementing the programs and I find that there have been growing pains and still are growing pains with those programs.

I find, however, that there has been much progress, there is still an awful long way to go with both programs.

I find since I have been there that the people in the Agency, the people in EPA both in headquarters and in the field are particularly committed, conscientious people. I find quite a bit of technical expertise. I am finding the same thing as I interact with their counterparts at the State level, the same commitment to the mission of dealing with hazardous waste.

As far as program review is concerned, the major finding is that it has got to be a continuing process, it is not something you can do today, have a study, get the finding and think you are through. It is something that I think in terms of evaluation of effectiveness of the program has to be a continuing process and one of the things I want to ensure that I institutionalize while I am at EPA, that is an ongoing evaluation process; just as your committee is ongoing in oversight, we have to have the same capability.

Let me turn to the specifics of program management since I have been there and some of the things we are trying to do.

I think they were reflected in some discussions you had last week with Mr. Cannon and Mr. Crampton. Some of the recommendations in their report are recommendations that we have taken into account, took into account while the study was under way as we are trying to deal with it. First let me say as far as I am concerned, and the administration is concerned, an important priority with both programs is to ensure there is strong momentum in moving forward with both programs; that our focus, for instance, on the Superfund Program is clearly on site identification and site cleanup; that our focus as far as Superfund is concerned is an aggressive response where there is any immediate threat determined as far as public health or the environment is concerned; that as far as RCRA is concerned just as Mr. Molinari said, it is our prevention program, the program that will ensure that we don't have these kinds of problems in the future; establishing a strong regulatory base, a strong enforcement program.

Building the capability and capacity at the State level will prevent these problems in the future.

Finally, the integration within the RCRA and CERCLA Superfund Program is extremely important. One of the things I have established as a major priority as we move forward is assuring that both of those programs go forward together.

So let me talk a little bit about policy and management improvements we have tried to initiate recently. As far as the Superfund Program is concerned, we have initiated a number of actions to basically sort out the operational management responsibilities in headquarters and the regions. This has resulted in decentralization of management responsibilities down to our field offices in each of our 10 regions, specifically, the removal authority which is basically the capability to respond in time of an emergency.

I delegated responsibility to the regional administrators to move out on any emergency that costs less than $250,000, reflecting the aggressiveness we want to symbolize as far as response to any immediate threat.

I have also decentralized the responsibilities for 3012 funds, those funds that the States are being granted to continue their identifica-

tion and assessment of hazardous waste sites; the authority for the regional administrators to move out more aggressively with enforcement actions specifically issuing notice letters to responsible parties; additionally we have continuing management review of possible delegations in our remedial program.

The intent is to ensure we have the proper level of management dealing with management problems. I think you will see in upcoming weeks in the Agency that there will be further delegations to our regional offices, the offices that are basically on the front line dealing with the problem, whereas the policy, program monitoring, technical support will be provided out of the headquarters office.

Second, we have a review of a national priority list. We have all heard about the 419 sites. We are in the process of finalizing that list. It has been out for comment. We hope to have the final list published early next month in July. At the same time we are publishing the final list we have begun an update process to include additional sites which should be listed as priority sites.

Basically the 419 is a base upon which we will be building numbers of priority sites in this country and we want to have a quarterly process for updating that national priority list so we can continue to deal with the worst case sites as they are identified.

In this regard I also initiated action several weeks ago to ask our regional offices again to go back and review the national priority list sites to determine whether there were any that would qualify for removal action, in other words where there was an immediate threat or a threat whether it be to drinking water supplies, fire and explosion possibilities, anything where stabilization was required and if so to submit those for approval immediately.

That process and screening has basically been completed. We are in the process of reviewing the results. It would appear that there may be as many as a fourth of those sites where that kind of action may be appropriate.

The next area of improvement which I felt was important and found that the Agency had been working on and we were able to complete was a new community relations policy, a policy as well as detailed guidance provided to our regional offices to ensure that the public participates actively in the cleanup of every one of the sites we are active on, that the public be made aware of exactly what the threat is, exactly what action the Agency is taking and have an opportunity for input as to whether they feel it is appropriate, inappropriate, what their concerns are, but basically to provide as much accurate information as possible as we go along.

I think you accurately reflected the fact we are dealing with a very emotional problem, dealing with the public that is quite concerned and becoming more concerned. I think it is our responsibility to ensure that they have every bit of information that we have as to just what the situation is and how we are trying to deal with it. So our community relations policy and implementation of it is particularly important at this time.

Additionally, we have begun work to try to ensure that there is——

Mr. LEVITAS. Excuse me. Let me interrupt at this point. There is a vote in process on the floor. The second bells have just rung. I don't anticipate that we will have many interruptions this morning

fortunately and we will be able to come back right after this vote and go straight through. I would like you to complete your statement after we return. Perhaps it might be best before we get to questions if Mr. Brown, if you have any opening remarks you would care to make from your perspective, and then we will go to questioning of the witnesses as a panel.

So with those few comments, I would suggest the committee stand in recess for 15 minutes.

[Brief recess.]

Mr. ROWLAND [presiding]. The subcommittee will come to order.

Mr. Thomas, you may continue your statement.

Mr. THOMAS. Thank you, sir.

Two other areas where we have tried to concentrate management attention in the Superfund Program, both of which were mentioned in the report that you reviewed last week, first, is the enforcement versus fund decisionmaking process. We have initiated several actions there which I think will overcome some of the problems evidenced in that report. First is a site classification process that we have underway, we review all major sites to clearly identify those that should receive an initial priority for enforcement action as opposed to those where we move with a fund decision and come back with enforcement for cost recovery.

Second, a continuing management review of site status, that is whether it is a site that is moving with fund money or whether it is a site that is in enforcement status with responsible parties ensuring that we have a management review on a continuing basis to make sure that that site is moving on the proper track.

Third, is the coordination between the Department of Justice, the Office of Legal and Enforcement Counsel and my office, the Office of Solid Waste and Emergency Response. I have been working hard with Courtney Price who is Acting Associate Administrator for the Office of Legal and Enforcement Counsel to be sure that there is good communication and coordination in that regard.

We have met with Carol Dinkins, Assistant Attorney General at the Department of Justice on a regular basis approximately every 2 weeks to be sure we are coordinating as far as cases are concerned. We have moved forward with a policy relating to remedial investigation feasibility studies as it relates to enforcement cases, that is to ensure that we have completed a full investigation and the development of feasibility alternatives for cleanup before we go to negotiations on a major site so that as the Government we feel we have complete information and complete strategy as far as cleanup is concerned laid out, to lay it on the table and negotiate with responsible parties.

We are moving out with aggressive cost recovery strategies that will ensure in those cases where responsible parties have not come forward or we have not been able to have them come forward and clean up or participate in cleanup of a site, that we have a cost recovery effort both in long-term cleanups as well as removals on emergency cleanups.

Finally, to have a balanced enforcement program both in litigation and administrative orders. We are using administrative orders, I feel, aggressively and properly as we move ahead to deal with the problems at the sites.

The final area that I have tried to concentrate on is the Federal action coordination. I have moved out to ensure that there is good communication and coordination between the Federal family that has to deal with the problem as far as Superfund is concerned.

I have mentioned the meetings that I have had and continue to have with the Department of Justice. I have also met with the Department of Defense Officials and made sure we have a good understanding of how we are dealing with those sites at Federal facilities, we have met with the Corps of Engineers to be sure we have a good working relationship and we are in the process of correcting problems on our side and them on their side to assure the corps is responsive to us and we are to them in cleaning up sites for us.

We are establishing a memorandum of understanding with HHS and specifically spelling out the responsibilities they would have and we would have with the Center for Disease Control and I have met with Dr. Brandt, the Assistant Secretary of HHS who we deal with.

Finally, the Federal Emergency Management Agency, I feel, we are working well with them, the agency I come from. I have established communication with their agency personnel who work with us when we have a relocation problem to deal with.

Now, let me turn briefly to the RCRA Program and tell you some of the things we are doing in that program.

As I indicated, we see that as our strong prevention program to establish a strong regulatory base to ensure that we have the capability and capacity at a Federal, State, and local level to deal with hazardous waste problems.

In this regard, as you know, the legislation authorizes that we move forward with the States to ensure that the States can pick up and manage the program in each of their locales by January of 1985, which is the final authorization date that we are shooting for.

To ensure that we make that, we are working closely with the National Governors Association and the Association of State and Territorial Waste Management Officials.

We have got various joint projects, including workshops, conferences on policies, and we are trying to provide as much technical support as possible.

However, I have also asked our regional administrators to develop specific strategies for those States that we do not feel will make final authorization to ensure that EPA has the capability to run hazardous waste programs in those States if a State does not make that authorization.

So we are working on strategies to ensure that the States do, and if they don't, we are working on backup strategies to ensure that we can run the program ourselves, as Congress has authorized.

In that regard, we have got an effort underway to fully define with the States exactly what the role the States would play and the Federal Government would play once a State is authorized; what is the Federal Government oversight responsibilities in defining that very specifically as far as monitoring and enforcement is concerned.

In the permitting area, an area that we are all concerned about, permitting new facilities, as well as currently operating facilities, we are moving ahead aggressively with call-ins and permit review.

We want to ensure that we have a thorough quality review of permits. At the same time, we want to ensure that the permits get out, that we, in fact, have public participation in that process and that we are able to permit the facilities that should operate and not permit the facilities that should not.

We are using and intend to use our enforcement tools as well as interim status withdrawal aggressively in that permitting approach to ensure that we do permit quality operations.

Finally, regulatory coverage. Under RCRA we are placing a priority or closing the gaps as far as regulations are concerned. In the testimony I have given both on the House side and will give next week on the Senate side on RCRA organizations, I have indicated what some of those gaps are.

I think you are aware of them: burning waste as fuel, restrictions on land disposal, small quantity generators are just a few.

In addition to moving ahead with those regulatory efforts, we are also working to ensure that this close consistency between what we are doing, our TOSCA program, our safe drinking water program so that we have an overall EPA effort as far as hazardous waste is concerned and not just independent program efforts.

Finally, as far as regulatory coverage is concerned, we are working to complete in a timely fashion our mining waste review as well as our utility waste review and the other large volume waste requirements that Congress placed on us.

In conclusion, I would say that we are trying to and we feel we are gaining momentum in dealing with a major, significant problem in this country, that of hazardous waste, toxic substances.

Bill Ruckelshaus supported my efforts fully. He is completely in accord with the directions I just laid out as far as the program is concerned.

I would not want to underestimate or lead you to believe that there is not much to be done in both of these programs. There is.

As I indicated, there will be a continuing management review process. I think we have made a good start and I think we have got a long way to go.

In my opinion, the key is good people and time to do the job. I think we have got good people and are getting good people and I think with your help, we will have the time to complete the job.

I look forward to the opportunity to working with this committee and your staff as we go forward and I welcome your input as far as our policies and procedures are concerend, and I welcome the opportunity to come and discuss those with you at any time you see fit.

Thank you, sir.

[The statement of Mr. Thomas follows:]

STATEMENT OF
LEE M. THOMAS
ACTING DEPUTY ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

JUNE 3, 1983

Mr. Chairman and Members of the Subcommittee, I am Lee M. Thomas, Acting Deputy Administrator for the Environmental Protection Agency. With my appointment as Acting Assistant Administrator for Solid Waste and Emergency Response on February 24, 1983, I became the senior Agency official directly responsible for implementation of the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), also known as Superfund. These statutes have a common goal of protecting health and the environment. To accomplish that goal, and as a new manager for the program, I have been examining both statutes to understand their objectives and to determine how we can implement them most effectively. I intend to continually evaluate how the program is operating, and how it can be more effective in attaining the statutory objectives. When opportunities for improvement are identified, I intend that they should be swiftly acted upon.

Our new Administrator, William D. Ruckelshaus, has emphasized the importance of developing momentum in these programs and supports the direction of the several policy and administrative

initiatives I will outline this morning. Both he and I want to be sure that the Agency is aggressively responding to public health threats from environmental hazards, developing more effective working relationships with States and other Federal agencies in responding to hazardous waste sites and spills, and building the capability of States and local communities to respond to hazards as well as meet their responsibilities in Federal clean-up and response activities.

I have worked closely with the career staff actually assigned implementation responsibility for RCRA and CERCLA to identify opportunities for improvement. I have reviewed the legislative history of the laws we implement along with recent oversight hearings and reports. The review recently conducted by EPA's Office of Policy and Resource Management is another source I have been able to draw upon. In short, I have benefited from a wealth of information and suggestions. However, I do not believe that adoption of any particular recommendation or group of recommendations should conclude efforts to improve these programs.

EPA's responsibilities, and its programs designed to meet them, are evolving rapidly. This is especially true for the Office of Solid Waste and Emergency Response where the most recent major additions to the framework of laws the Agency administers are RCRA and CERCLA. The problems these laws were intended to address are pressing and were long neglected. Decisions we face daily in implementing these laws frequently require

consideration of technical or scientific factors which approach the frontiers of knowledge, and often require us to consult with other Agency offices or government agencies. The number of active hazardous waste handlers, the diversity of their activities, and the number of abandoned hazardous waste sites which require attention make our undertaking enormous and add a further element of complexity. Because we are in the early phases of implementation and we are learning a great deal, our very perception of the problems we are attempting to address is changing. Solutions will be modified as problems are re-defined.

With all these factors in mind, the Agency has developed momentum in addressing hazardous waste problems and changes now being instituted should accelerate our progress. I would like to briefly outline that progress and then describe the initiatives we are taking under first the Superfund and then the RCRA authorities.

Superfund

In the two years since enactment of CERCLA, the Agency established management systems, developed an initial policy and regulatory framework, and began the field planning activities required for responsible decisions on site remedies. Milestones during this time included establishment of a Superfund program office within two months of passage of the statute; design of automated data systems for site inventory and project tracking; development of a comprehensive financial management and accounting system to support cost recovery efforts as well as enhance program management;

design of a hazard ranking system to prioritize site response; award of major contracts to support the field activities of the emergency, remedial and enforcement aspects of the program; proposal of the National Priorities List of 419 sites for remedial action; and health and safety training programs for regional and State employees involved in actual response actions.

Turning to actual cleanup activity, I have observed that relatively little attention has been focused on one of our major areas of accomplishment - the "removal" program. Removals are relatively short duration responses to emergencies or containment and stabilization actions to forestall emergencies at sites which will be eventually addressed under "remedial" authorities. It is important to note that in removals the Federal Government can act without requiring State participation. By April 30, a total of 137 removal actions had been approved for implementation by EPA or the Coast Guard; of these, 112 have been completed and over $28 million has been obligated to date. Total surface cleanup has been completed at 62 sites. These are sites in addition to those on the priority list for remedial action. For 51 sites on the priority list, we have had to step in on an emergency basis.

For long term or remedial action, the Agency is compiling a growing record of work underway. As of April 30, over $76 million has been obligated for remedial actions; these include 69 feasibility studies, 19 designs, 14 remedial actions and 18 initial remedial measures.

In order to help further the goal of supplementing the Fund through enforcement action, the Agency has referred 29 new CERCLA cases to the Department of Justice to date. In addition, the Agency has amended 24 existing RCRA section 7003 "imminent hazard" cases to include CERCLA counts. So far, Agency enforcement efforts have resulted in 43 settlements worth an estimated $151 million in private-party cleanup, financial contribution to Government-funded response, or recovery of CERCLA funds.

I would also like to note that Agency enforcement efforts have not been limited to sites on the National Priorities List. Thirteen of the 43 settlements involved non-priority list sites which were filed as RCRA section 7003 "imminent hazard" cases. Since CERCLA Funds can only be used for remedial work at listed sites, Agency efforts to secure private-party remedial action was the only method for securing response at these sites. Similarly, the Agency has referred two new CERCLA section 106 cases to the Department of Justice requesting injunctive relief to order defendants to perform remedial action at sites that are not on the NPL.

In summary then, the Agency has taken action under either response or enforcement authorities at 269 priority list sites and at an additional 127 sites not on the list. I think it is important to consider recent management changes against this background. These initiatives include: decentralization of EPA decisionmaking, eliminating cost sharing for remedial planning activities, evaluation of the need for removal actions at

National Priorities List (NPL) sites, adoption of a community relations policy and guidance on updating the NPL. Allow me to briefly discuss each of these actions.

Decentralizing Operational Decisionmaking

We have recently transferred significant operational authority to the field staff. Specifically we have redelegated the authority to approve removals of up to $250,000 to the Regional Administrators, and are working on redelegating from the Regional Administrators to On-Scene Coordinators the authority to approve removals of up to $50,000. The Regional Administrators have also been given the authority to issue grants to States to accelerate the investigation by States of additional waste sites that have been identified as potentially being hazardous. Money for the grants will come from funds appropriated by Congress under RCRA section 3012 for this purpose.

We have also initiated a review of improvements to the efficiency and effectiveness of the program which may be gained by further delegation to the Regions and further redelegation within Headquarters. In this regard, we recognize the need for appropriate guidance to accompany the transfer of decisionmaking authority in what has been a centralized program. Policy and operating guidance can assure that there is a degree of consistency among decisions reached in similar circumstances by ten Regional offices. Promising areas for further delegation of authority include:

- new authority for specific phases of remedial actions, and

- new authority to approve contracts and cooperative agreements to implement aspects of the removal and remedial program.

Within Headquarters, I have recently delegated authority for concurrence in Regionally developed enforcement actions to the Director, Waste Programs Enforcement.

Potential for Removals at Remedial Sites

Another important action we are undertaking is a systematic review and evaluation of all 419 Superfund priority sites, which are candidates for long-term cleanup actions, to determine which may be made less hazardous through limited removal action while options for longer-range solutions are developed. Removal action can be initiated more quickly than remedial action. The statute places constraints on removals which make clear that removal action is not appropriate for all sites. Therefore, Regions will weigh site conditions and will tie removal actions and scheduled remedial actions more closely together in recommending action. I believe that this initiative will result in additional near term action at a larger number of sites than would otherwise take place.

State Cost Share

One of the most-often cited problems with getting projects moving is the requirement for the State cost-share in the planning stages. Therefore, we have eliminated the requirement for States to pay 10 percent of the cost of studies and designs to develop cleanup options for priority sites, thus allowing the

investigation and assessment of sites even in States suffering financial difficulties.

We are taking steps to aid the States in meeting the statutory requirement for matching cleanup construction costs, and for developing improved contracting capability. A grant just awarded to the Association of State and Territorial Waste Management officials will provide a mechanism for training workshops to assist States in these areas.

Intra-governmental Cooperation

The Superfund statute assigns important responsibilities to several other Federal Departments and agencies and to the National Response Team which is comprised of some 13 Federal agency members. Executive Order 12316 further distributes the President's powers under CERCLA. These agencies received $12.8 million for ongoing support activities under CERCLA in FY 1983, and have been allocated more than $37 million thus far in the fiscal year for site specific work.

We are taking steps to strengthen relations and communication with other Federal agencies which have key roles in the success of the Superfund program. These include: the Corps of Engineers with responsibility to manage Federal contracts for cleanup; Centers for Disease Control, which performs health assessment work which supports evaluation of site hazards and response actions; the Federal Emergency Management Agency, which administers relocation; the Coast Guard, which is the lead

response agency for spill response in certain parts of the country; and the Department of Justice, the Federal Government's trial lawyer in enforcement cases. We also intend to work more closely with the Department of Defense in monitoring and assisting them to identify and contain sources of contamination related to or on Federal installations, and in monitoring their progress.

Community Relations

On May 9, we issued the Superfund Community Relations Policy, which recognizes the concerns of persons potentially exposed to hazardous sites and their need for timely and accurate information on hazards. This policy provides citizens with an opportunity for meaningful involvement. While cleanup alternatives are being developed and implemented. The policy will be included in the Superfund Guidance to the National Contingency Plan. A detailed handbook of recommended actions and techniques to promote public participation in site cleanup decisions is in the final stages of Agency review and will be issued shortly.

National Priorities List

This month we have issued important guidance on promulgating and updating the National Priorities List. I anticipate that the NPL will be made final in mid-July. The NPL will present the overall agenda for Superfund action. We intend to update the List to reflect new information and new sites which come to our attention and plan to issue the first update within 3-4 weeks of promulgation of the NPL.

Enforcement of Further Cleanup

One of the most important activities currently being undertaken jointly by Headquarters and the Regions is the classification of NPL sites by categories of:

- Fund-financed cleanup (with no enforcement activity),
- Enforcement action (with no Fund-financed activity) and
- Fund-financed cleanup (with enforcement action for cost recovery).

Given the large number of sites that must be addressed over the next three years, it makes sense for the Superfund remedial and enforcement components to focus their efforts on different sites to the maximum feasible extent. We will be reserving joint enforcement and Fund-financed activity for a smaller number of sites for which enforcement prospects are good, but where the public interest also suggests the need for prompt remedial response.

As part of the site classification effort, the Agency has established a target of identifying and developing 50 new enforcemant cases this year at sites where Superfund monies are unlikely to be employed. Action on these cases will be the Regions's and Headquarter's top enforcement priority.

The Agency has also recently initiated a new policy respecting negotiations with responsible parties to secure private party cleanup. It is based on the experience of the first two years of CERCLA enforcement which indicates that the prospects for effective

negotiations are enhanced when the government has firm estimates of the dimensions of the problem and a proposed remedial solution ready to "lay on the table."

Under the new policy, the Agency will normally undertake the remedial investigation and feasibility study (RI/FS) prior to negotiating with responsible parties. The negotiations will begin only after the studies have been completed, i.e., the finished study will serve as the basis of negotiations with the responsible parties.

The negotiations for design and construction will then proceed under firm deadlines to which we will strictly adhere. Responsible parties will be given the opportunity to completely implement or pay for the total remedy. If the negotiations are not successfully concluded within the time specified, either the Fund will proceed with total site cleanup or a CERCLA section 106 enforcement action--either a civil referral or a unilateral administrative order--will be initiated for site cleanup.

The approach of postponing negotiations until after the RI/FS has been completed has three major advantages:

1. It assures that remedial alternatives are adequate to protect the public health and the environment.

2. It assures that negotiations will not drag out interminably since both the Agency and the responsible parties will know at the outset the dimensions of the problem at the site and the remedies we want them to design and implement.

3. It also assures that--should negotiations prove unsuccessful--site work will be able to proceed quickly with either Fund-financed cleanup or enforcement efforts since the necessary planning work will already have been completed.

The Agency plans to move out aggressively to recover Fund monies that have previously been expended. Our strategy is to concentrate CERCLA section 107 actions this year on completed removal actions. In addition to those section 107 cases already referred to the Department of Justice, we have tentatively identified another 20 potential cost recovery actions. Together, they will form the basis of this year's cost recovery efforts.

An increasing emphasis on recovering the costs of remedial actions--which generally involve greater average Fund expenditures--will be seen next year as the first remedial actions near completion.

Similarly, the Agency plans to expand its use of Administrative Orders--with their ultimate sanctions of fines and treble damages--to secure private party site cleanup. Since April, the Agency has issued five CERCLA section 106 orders. Orders for at least an additional thirty sites are under development.

Resource Conservation and Recovery Act

Although it is clear that our Superfund responsibilities require a great deal of management attention, our RCRA mandate is equally challenging. More than 50 million tons of hazardous wastes are now generated annually. Assuring safe handling and disposal of these wastes is necessary to protect the public now and to avert future Superfund sites. For these objectives to be met, the Agency must mesh several critical components into a sound regulatory whole.

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Congress has charged us to develop regulations to define hazardous waste and govern its handling and disposal, including rules which establish permitting standards for treatment, storage, and disposal facilities. Major regulations are in place, including permit standards for processes which account for disposal of most wastes defined as hazardous under RCRA.

The statute envisions that States will be "authorized" to operate programs in lieu of EPA--including the authority to issue permits. A majority of States have been evaluated against RCRA's statutory criteria and granted interim "authorization". These States have conducted 90% of the 14,000 plus compliance inspections performed in the past year.

We are bringing facilities which were essentially grandfathered by RCRA under the permitting standards recently adopted. EPA and the States have "called-in" about 1,400 storage and treatment facilities, some 130 incinerators and 175 land disposal facilities for evaluation against the new standards.

Each element of this program must succeed or it impairs the effectiveness of the other components. Failure to authorize States will deprive the national program of creative regulatory approaches suited to special State needs and of State personnel resources. If appropriate standards are not developed and refined, the permit effort will not realize its full potential. If permitting is not pursued facilities will continue under "interim status" and will not be uniformly upgraded.

While significant progress has been made, improvements are possible and we are taking the steps necessary to realize them. Let me touch on them briefly, in each of our major areas of activity.

State Authorization

We are moving to strengthen the capabilities of States to attain authorization to run their hazardous waste management programs under RCRA. The Regions are developing State-specific authorization strategies to accelerate the States' progress to authorization. They will also develop contingency plans to run the program where authorization requests are not submitted or are inadequate. States must receive final authorization by January 1985 or their interim authorizations will expire and responsibility to administer the program will revert to EPA.

We are developing policy and guidance which recognizes that the partnership between States. The Federal government in hazardous waste management will continue beyond the authorization of States. The Congress will look to EPA to assure reasonable national uniformity of implementation, to exercise quality control, and to provide comprehensive national information on which to make independent evaluations about the success of the program.

Permitting

Although nearly 2,000 facilities have been directed to submit complete permit applications, relatively few have made timely submissions of the technical information needed to make permit decisions. Our Regions have been advised to stress to the regulated community that high quality and timely submissions are expected or enforcment action, including penalties, will be taken. Also, "interim status" may be terminated, and the facility forced to cease handling hazardous waste. Facilities which cannot qualify for permits will be required to close in conformance with regulations designed to assure that hazards to health and the environment are averted. We have also asked the Regions to develop internal management strategies to assure the quality of permits issued as well as to attain goals for processing times.

Regulatory Coverage of RCRA

Although we have adopted regulations which address most disposal processes and the great majority of hazardous waste generated, we have identified several areas in which action is needed to close gaps in the regulatory program.

My testimony on March 24 to the House Subcommittee on Commerce, Transportation, and Tourism, chaired by Representative James J. Florio has been submitted to you for the record. It highlights areas in which we believe more work is needed. Principal among these are burning wastes as fuel, further restricting land disposal of hazardous waste, and small quantity generator wastes.

In conclusion, Mr. Chairman, the hazardous waste program we are implementing under RCRA and CERCLA has accomplished important results for the American public. Much remains to be done, however.

I appreciate this opportunity to outline in summary fashion initiatives we have taken in recent weeks to improve the timeliness, effectiveness, and efficiency of the program. In my view the process of management evaluation is continuous. Our experience can and should lead us to new approaches to hazardous waste problems we have encountered before, as well as the opportunities to address hazardous waste problems we have not previously confronted.

I will be happy to answer any questions you may have.

Mr. ROWLAND [presiding]. Thank you, Mr. Thomas.

Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

At this point in time I had planned on making a statement about the resolution House Resolution 180 introduced by Mr. Levitas, but I am going to defer that until he comes back in the room and I think that will be momentarily.

Mr. Thomas, your statement suggests that many of your recommendations were implemented while the report was being written within just a few weeks of the leadership change at EPA.

Will you wait to see the results of those initiatives before instituting further management changes?

Mr. THOMAS. You are correct. We did move forward to implement a number of changes as that report was being completed. We were reviewing the program with them as well as ourselves and with other groups.

For instance, your own group, reviewing reports that had been done by other officials as well as our own managers. We were implementing those results as we go along and I intend to continue to do that.

I have underway right now that continuing management process that I talked about by having that kind of process in place. Recommendations are continually made to me by my office directors as well as by myself and other individuals, and we will implement those recommendations as they come forward.

Mr. MOLINARI. One question that comes to my mind from time to time is with ail the changes that have taken place over the past several months, could you describe for this subcommittee what position EPA is in?

Is it your assessment that EPA has fallen behind as a result of the various changes, particularly upper level positions; how long is it going to take for the team to be put together?

What can we expect to see done in that regard?

Mr. THOMAS. From my perspective, I feel like the new team is being put together quickly. Additionally, I find that career service personnel in the Agency have not hesitated to move forward strongly in their program areas and continued to ensure that those programs are operating as they should.

Now, Bill Ruckelshaus has impressed me with the fact that he is moving aggressively to have the personnel in place to fill the key positions.

That process takes some time, selecting people, having full reviews of those people and then nominating. I know my own nomination just went up yesterday for the Assistant Administrator's position, but in my particular program area I feel we have been moving aggressively, particularly during the last 3 months, to deal with a number of the management problems that you are aware of.

Mr. MOLINARI. During the hearings that we have held over the last few months, we have looked at several statements. One was prepared by Mr. Yamada under the old regime indicating that there could be substantial shifts in personnel at the regional levels depending upon the number of referrals to headquarters for enforcement action. That concerned me very deeply, particularly when I looked at my own region.

Is there any reading yet as to the change in the number of personnel at the regional levels?

Mr. THOMAS. I am not completely familiar with the memo you reference. I am familiar to a certain extent with what is happening now.

Bill Ruckelshaus has done several things that relate to regional operations. One is he is establishing an office of regional operations in headquarters with an associate administrator heading that up to ensure that there is a clearer link and focal point for regional operations and headquarters operations for coordination to ensure that there is proper management and that linkage.

As far as the movement of personnel are concerned, I am not aware of any action that is underway at this point in time that would significantly shift that. There may be.

I am just not aware of it.

If I could just add, I think the whole focus, from my point of view in the involvement with Bill and the other managers in the Agency, has been to not try to make major personnel shifts and organizational changes at this point in time, but to ensure that the organization we have is working properly.

Mr. MOLINARI. Have there been any cases where it appears that in some of the regional offices there is a need for additional personnel?

Mr. THOMAS. There have. As a matter of fact, there has been, as you know, in the past a review prior to Bill Ruckelshaus arriving. There was discussion about whether additional personnel were needed both in the regional offices and in headquarters, and I know he has been in the process of having those same discussions since he has been there.

Mr. MOLINARI. No movement yet toward increasing the number of personnel?

Mr. THOMAS. Not to my knowledge.

Mr. MOLINARI. I understand one of the new policies being adopted by Mr. Ruckelshaus is going to be to decentralize some of the decisionmaking that pours down to the regional offices.

Mr. THOMAS. I take back what I said. He is in the process of reviewing resource issues, both dollars and personnel, and that includes regional as well as headquarters resources.

The only movement over the last 3 months as far as additional resources is we did get some limited relief in hazardous materials, hazardous waste programs.

This was before he arrived, we received an additional 100 FTE over and above our ceiling in negotiations with OMB. That resulted in us getting a few additional positions in headquarters and some additional positions in the regions.

Mr. MOLINARI. Has any study been done to show the relationship between enforcement personnel and the amount of money that EPA is able to recover from the responsible parties in cleanup?

Mr. THOMAS. Not to my knowledge. The other members might know of that.

I would say, though, that at this point in time in the history of the Superfund Program, particularly because I think that is really where we have been in the authorities of cost recovery more than anything else, it is a fairly young part of the program in that any number of sites are not at a stage where you would be entering into a cost recovery effort so it is probably premature to try to make that kind of comparison at this point in time of cost recovery.

In other words, the strategy has been to try to wait until basically you have completed, for instance, on a removal action or at least a major portion of that on a cost recovery action or a 107 action before you go in and file to actually recover those costs.

Now, that does not mean there has not been a lot of action on the front end which is to get responsible parties prior to the cleanup to participate.

To my knowlewdge, I don't believe there has been any study to compare the amount of money and the personnel.

Mr. MOLINARI. The reason I raised that question is some of the very serious cleanup sites such as Stringfellow, where it would probably take the resources of an entire regional office just to stay on top of the situation. Other sites that might fall within that region's domain would probably have to be put on the back burner unless there was additional personnel put at their disposal to deal with it.

I am just wondering whether any thought has been given to doing just that.

Mr. THOMAS. I have been addressing that issue.

Mr. MOLINARI. Mr. Chairman, I mentioned while you were out of the room that I had intended to have a dialog and make a statement with reference to the resolution and Mrs. Burford, but I think since we are at second call for a vote, I will delay that until we come back, with your consent.

Mr. LEVITAS. All right. There is a vote going on. Unfortuantely, my prediction that we wouldn't be interrupted again was incorrect.

Some of the Members, for whatever reason, are playing games today, but we will expect that this will be the last vote for a while and hopefully we will be able to go straight through, and I am hoping to be able to conclude if possible before the noon hour.

I understand, Mr. Brown, that you did not have an opening statement that you wanted to make, is that correct.

Mr. BROWN. That is correct, Mr. Chairman. I am just here as the lawyer to answer any questions you might have about the references to the legal portion of the management review.

Mr. LEVITAS. Well, we will get into that. I do have some questions on that interrelationship, and I suggest that we recess for 10 minutes and resume with a little bit of luck and be able to push straight through. Thank you very much.

The subcommittee will stand in recess.

[Recess.]

Mr. ROWLAND [presiding]. Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

Mr. Thomas, are you able to predict the number of priority list sites at which removal action is possible? I was very interested in the testimony that you gave this morning, particularly that reference to the sites that are subject to possible fire or explosion.

I think when Mr. Crampton testified, he indicated that the potential threat might approximate 50 percent of the sites in question. Then he kind of backed off that figure when I asked him some questions, but we have had examples of some serious fires and serious explosions which I think adds substantially to the health threats from these sites.

Could you expand upon that area for us so we know what you are talking about and how serious the problem is?

Mr. THOMAS. We have gone back and asked each of our regional offices to do a thorough review on the sites, the National Priority List sites, to determine any that they thought were eligible on immediate removal in addition to the long-term remedial program that we have underway for each of those sites. In other words, site stabilization, any that presented an immediate threat to public health, safety, and the environment.

That review is in the process of being completed now. When we asked them to do that review, fire and explosion is one of the categories that they look at, but so is air, surface water, and ground water contamination problems. In other words, is there an immediate threat, for instance, to the drinking water supply that should be dealt with immediately as opposed to a longer term cleanup?

So, I asked them in a broad sense to look at those sites again. The preliminary indication that I have gotten is that there may be approximately 100 of those sites out of the 419 sites that may qualify for removal action, regions in the process of finalizing that and making a determination as to whether action should be taken or not.

Mr. MOLINARI. Now that is the broad category, not just fire and explosion?

Mr. THOMAS. That is correct.

Mr. MOLINARI. Could you break that down further to tell us how many sites might be involved in the fire/explosion area?

Mr. THOMAS. When we have the full information in, we will be able to do that. At this point in time, Bill may have a feel for it. He has talked with the regional people.

Mr. MOLINARI. Mr. Hedeman.

Mr. HEDEMAN. There was a scoring on the problem of fire and explosion that took place at each of the sites that are on the 419 list and approximately 50 percent of them did score some number. That is the number that Mr. Crampton used for his report.

However, a number of those sites that scored some problem with respect to fire and explosion scored in the category of a two or a three, which is a relatively remote situation.

In discussions I had with our regional personnel on Monday in a conference called the followup on Lee Thomas' directive, our regions have, as Lee has indicated, identified roughly 100 sites that they believe would score high enough to require some sort of immediate action. Presumably there are a number of other sites that have some minor potential threat for fire and explosion but a relatively remote one, and I don't know that we would give them priority attention.

Mr. MOLINARI. I just want to make sure I understand your answer. Those that had a relatively low score, 2 or 3, as you indicate, are they included in that 100 number that you are quoting?

Mr. HEDEMAN. No, sir.

Mr. MOLINARI. So the 100 are those that are potentially serious enough to warrant some prompt and remedial action?

Mr. HEDEMAN. Either in terms of fire and explosion or some direct contact by populations to chemicals on site.

Mr. MOLINARI. I see.

Mr. HEDEMAN. As an example, through air, water, lagoons overflowing into surface waters, air emissions from sites because of leaking contaminants coming from drums or exposed lagoons, et cetera.

Mr. MOLINARI. When the fire and explosion took place in a chemical control plant in Elizabeth, there was much speculation that that might have been arson and that those who set fire to it were seeking to destroy some of the evidence that could have incriminated certain individuals.

Now, obviously that is a matter of concern to myself and members of the subcommittee and to you people as well. But I don't know if that really was an accurate statement. I would like to get your assessment as to if a fire explosion occurred at some of the sites, would that interfere with your ability to identify the responsible parties and then subsequently to seek recovery?

Mr. HEDEMAN. Yes, sir; I think it would. Generally the fire and explosion situations we have experienced thus far are occasioned either by an act of God, lightning or thunder storm, or by an act of a third party, either intentional, possibly through the situation you described at chemical control or because the sites are in close proximity to a highway or some other population area such that through careless throwing of a cigarette or something at the site, they could ignite.

We have had an example of a site in California about a year and a half ago that was sabotaged through a firebomb that was thrown into the site. Clearly, whenever that happens, it is going to destroy

any type of evidence we may have in terms of who owned the drums and waste at the site or other types of evidentiary material at those sites.

So it would be very necessary. Indeed, as we move to correct the situation through the removal category, we also would be going through the evidentiary collection at the sites to ensure that we have that for cost recovery purposes against responsible parties.

Mr. MOLINARI. It would be in the nature of an inventory. Barrels would be identified as to who they belonged to and what might be in them.

Mr. HEDEMAN. Yes, sir; that is correct.

Mr. MOLINARI. Mr. Chairman, at this point I would like to deviate, with your consent, from the questions of the witnesses to bring up what I consider as an important piece of unfinished business.

This subcommittee was the party responsible for the action that eventually resulted in Congress holding Anne Gorsuch Burford in contempt, and thereafter our chairman, I think, acted very responsibly and subsequently reached a rather historic agreement with the administration which provided for certain action to be done by the administration and for access to files. On the 10th of March, Mr. Chairman, I sent a letter to the Speaker, Mr. O'Neill, asking him to give consideration to moving the second resolution which, in effect, would be in keeping with the agreement that was reached between yourself and others saying that we are satisfied that the agreement was kept and to the extent possible purging Mrs. Burford of whatever contempt was committed.

I would like to introduce my letter, dated March 10, 1983, into the record, Mr. Chairman.

Mr. LEVITAS [presiding]. Without objection, it is so ordered.

[The letter referred to follows:]

GUY V. MOLINARI
[illegible] District, New York

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March 10, 1983

The Honorable Thomas P. O'Neill, Jr.
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am writing in regard to the contempt citation voted by the House of Representatives on December 16, 1982, against Anne M. (Gorsuch) Burford for failing and refusing to furnish certain documents in compliance with a subpoena issued by the Subcommittee on Investigations and Oversight of the House Public Works and Transportation Committee. I believe it is now time for the House to release and purge Mrs. Burford from this contempt proceeding.

I am not making this request for any partisan reasons whatsoever. As you know, when the contempt resolution came before the House, I argued strenuously for its passage. In the past few months, as the ranking minority member of the Investigations and Oversight Subcommittee, I have been as vocal as any Democrat in criticizing the EPA's management and implementation of the Superfund program.

Yesterday, President Reagan agreed to turn over all documents relating to the EPA matter. With this announcement, the major impetus behind the contempt citation has been satisfied. I think everyone would agree that the invoking of executive privilege only served to delay and detract from the House's investigations into the actual policy problems at EPA. For the House to now continue with the contempt proceedings, we run the risk of making the same mistake. A continuation of the contempt proceedings can only detract from our continuing investigations. In addition, since the contempt resolution was approved, it has become clear that Mrs. Burford, in fact, wanted to provide Congress with access to the documents but was overruled by some officials in the Department of Justice and the White House.

While I am determined, as I am sure many of my colleagues are, to continue to vigorously pursue our investigations into EPA programs, I ask that you move expeditiously to enable the House to take action which would put the contempt citation behind us.

Sincerely yours,

Guy V. Molinari

Guy V. Molinari
Member of Conress

GVM:dg

cc: Hon. Robert H. Michel

Mr. MOLINARI. I received a response from the Speaker dated March 14, 1983, and it is brief. It says:

> Dear Congressman Molinari, this is in response to your recent letter requesting that I move to expeditiously enable the House to take action which would put the contempt citation of Anne Gorsuch Burford behind us.
>
> As you know, Chairman Levitas signed an agreement with administration officials which in part decided that he would undertake to produce a resolution citing noncompliance with a subpoena on which the House voted for contempt on December 16, 1982, had been effected and further providing for certification of such resolution to the United States Attorney. I am not, nor is the House, a signatory to that agreement. It is, therefore, a matter within the purview of Chairman Levitas' jurisdiction, and it is not within the Speaker's judgment to determine whether compliance has been effected and, if so, to undertake the representations contained in the agreement.

Then, of course, Mr. Chairman, on May 3, 1983, you, in fact, introduced such a resolution which was in keeping with the bargain that you reached with the administration.

This matter was one that was so very controversial and we had a most difficult time in trying to get the administration to cooperate with us, but we finally did. In the spirit of fairness, after taking this very difficult action, I don't like to see Congress put in a position where we are not living up to our part of the bargain.

I don't mean that disparagingly toward you, Mr. Chairman, because I know that you submitted your resolution and I know that you have done an awful lot of work to move it along.

I talked to Bob Michel today and I learned that there was a meeting held yesterday among the leadership to discuss this very matter. It was my understanding, in talking to the chairman of the full committee, Mr. Howard, that he was not willing to permit the matter to be brought before the full committee until the Justice Department, Mr. Harris, in particular, came before the full committee to explain why he did not present the matter to the grand jury as the House directed.

Mr. Chairman, Mr. Howard indicated to me today that he would be willing to take the matter up before the full committee, not next week but the week after, either on Tuesday or Wednesday of that week, and I would like to know, Mr. Chairman, what we can do at the subcommittee level to move it along so that it would be ready for the full committee at that time.

Mr. LEVITAS. Thank you, Mr. Molinari.

The intention of the Chair is as follows: Subject to physical arrangements as to availability of witnesses and hearing room, it would be my intention on Tuesday or Wednesday of next week, hopefully Tuesday, to schedule a hearing on H. Res. 180, which is the resolution I have introduced.

At that hearing, I would expect the witnesses would be our staff members who have been involved in the implementation of the agreement reached with the administration—Mr. Prolman, Mr. Ziegler—to present their report to the subcommittee. I would expect that report to cover their experience in having access to the documents that we have been seeking, to provide us with answers to a couple of questions that have not yet been answered, why certain documents that should have been in the files that we have looked at were not in those files, what happened to the boxes of

files on the Chemdyne site that disappeared in the Chicago regional office.

Then I would ask for the certification, which the agreement calls for, from the appropriate officials at EPA as to the completeness of the files that have been made available to us as to the integrity and the efforts made to make certain we got all the files that we were seeking.

Finally, I would expect to hear from the appropriate official at EPA—it was to have been Mr. Verstandig; he is no longer there, of course—who will provide us with the direct information as the directives which have been furnished to officials at EPA, concerning implementation of the agreement, so that we can be assured that it is a policy rather than an ad hoc response to the particular matter, giving us full access to the files that we need to pursue this investigation.

Finally, I would expect Mr. Stanley Brand, counsel to the House, to be available to answer any questions concerning the resolution and the procedures that are being followed.

I have also stated that any Member of the House having been contacted by several who may desire to appear and testify will be afforded the opportunity to do so.

Following that hearing, it would be my intention immediately, the same day, to mark up H. Res. 180 and to report it, hopefully immediately, to the full committee so that prompt action could be taken before the full committee.

Following that, if it is approved in the full committee, I have been given assurances that the matter would be brought to the floor under the appropriate rule that would permit early consideration of it.

I make this announcement publicly for two reasons: No. 1, since it comes as news, I am sure, to Mr. Prolman and Mr. Ziegler, and they will have to make the necessary arrangements for that testimony, although we have talked about it previously, and so that Members of the House who choose to testify will have ample notice to do so. And also so that—and I assume there is somebody here from EPA who can carry the rest of that story back—and, no doubt, your staff will be in further touch as to the specifics concerning the certification and the evidence concerning the implementation of the policy, as a matter of policy. That would be my desire and my proposal.

Is there any further discussion?

Mr. MOLINARI. Mr. Chairman, with your permission I will continue the questions.

Mr. LEVITAS. Does any other member have any comment?

If not, the gentleman from New York.

Mr. MOLINARI. Mr. Thomas, does the Superfund statute itself create tension between the option to take direct cleanup financed by the fund and the option to seek or compel responsible parties to perform this cleanup?

Mr. THOMAS. I think to a certain extent, it does. I think we have to take management initiatives—and we have tried to overcome that—but a very strong enforcement provision is in the Superfund statute, as you know, both the responsibilities up front to try and ensure that responsible parties, if they are viable responsible par-

ties, take action or contribute funds as well as cost recovery options. But at the front end of the process, those enforcement authorities and basically the intent that is laid out in that statute to have responsible parties participate, I think require that you take into account very clearly those enforcement actions as you are working a site as opposed to fund finance actions.

Now, it would seem to me, and what we try to do, is ensure that basically there is a management overview of your process, your site cleanup process, and the process you are using for enforcement versus fund finance, and that they, in fact, compliment each other but don't compete with each other. I think that is where some of the tension came from, though, and I think the key to it is ensuring that you have a management overview with a clear goal in mind.

Your goal is to clean up the site. You have a variety of tools. You have enforcement tools, fund tools. You have to ensure that you are using the proper ones at the proper time.

Mr. MOLINARI. Mr. Chairman, at this point I am going to yield to Mr. Snyder, the gentleman from Kentucky, who has a question to ask of Mr. Hedeman.

Mr. SNYDER. I thank the gentleman for yielding.

Mr. Hedeman, as you know, we have submitted to you a parochial question, and I would like to get it on the record. One of the 419 Superfund priority sites is the Newport, KY landfill. To date, cleanup at that particular site has involved remedial action taken by the Northern Kentucky Port Authority under State enforcement and court order. No Federal Superfund dollars have been committed to the accomplishment of these remedial measures.

How will the policy changes in the Superfund Program administration affect and expedite the cleanup of the Newport landfill?

Mr. HEDEMAN. Thank you, Mr. Snyder.

As you know, the Newport site is a former municipal sanitary land fill that was purchased for the purpose of closure in 1979 by the Northern Kentucky Port Authority. A remedial action master plan, which is the first step in any of these sites, outlining the current situation at the sites and a proposed scope of work, was completed on May 12. That ramp, as it is referred to, recommended as the next step a remedial investigation and a feasibility study with an estimated cost of $150,000 to $250,000, and also initial remedial measures including events from removal and drainage ditches.

No further action is planned at the site at this time. The recent policy initiatives at this time do not affect the progress at this site. The waiver of the 10 percent cost share for planning and design activities, which Mr. Thomas accomplished about 2 weeks ago, cannot, because of the statute, be done for a site such as this one. This is because the site is publicly owned and, by statute, the contributions by the State must be 50 percent for all planning, design, and construction.

It is possible that the State of Kentucky could be given credit for previous expenditures at this site by the port authority, and that credit could be sufficient to cover the State's share of the work recommended in the ramp. But, as yet, the State of Kentucky has not provided any documentation necessary to determine this amount of

credit. Until this is done, we will not be able to move ahead with the investigation and studies recommended by the grant.

Finally, the State of Kentucky did reach an agreement with the port authority for the authority to install monitoring wells around the site during the summer. This will help us and the State determine the extent of the off-site contamination on this site.

The port authority does have the money to do this work and will not seek funds for reimbursement from EPA, as I understand it. In capsule form, then, it would be, I believe, necessary for the State of Kentucky to move to either contribute its 50 percent share at that site so we could move into the initial measures, and also the investigation and studies, or provide the documentation to determine that they have already done enough work at that site to get this credit.

Upon receiving that, we would be in a position to move further evidence.

Mr. SNYDER. I thank you, Mr. Hedeman.

Mr. Hedeman, since the rules of our committee prohibit me from transmitting any copy of the transcript until after revisions and extensions and so forth, I wonder if you would furnish me that in a separate memorandum so I could send it down to the folks of Newport?

Mr. HEDEMAN. I would be happy to do that.

Mr. SNYDER. Thank you very much.

Thank you, Mr. Chairman.

Mr. MOLINARI. The chairman is usually right in his predictions, but not so right this morning. And I will yield back to the chairman at this point.

Mr. LEVITAS. Thank you, Mr. Molinari.

Really, after being in Congress a few years, I should have known better than to have said what I did. The only thing certain around here is the uncertainty.

There is a vote on an amendment and I guess it might be well for us to respond to that vote and then get back as quickly as possible so we can proceed.

I have got a few questions. I know Dr. Rowland does and perhaps Mrs. Johnson may, as well.

The subcommittee will stand in recess for 10 minutes.

[Recess.]

Mr. LEVITAS. The subcommittee will reconvene.

In the interests of time, I think we will just proceed. I have a couple of questions that I would like to pursue.

First, let me say, Mr. Thomas, I am pleased to hear the efforts and action that you are taking and I think they are going in the right direction.

I don't know if Mr. Molinari may have asked this when I was out of the room, but you stated that your recent reassessment that was performed by regional offices of the 419 priority sites has indicated that perhaps as many as a fourth might be in line for prompt removal action.

I have a recollection from some earlier testimony that the number could be as high as 50 percent of that list. Could you explain the difference between my recollection and your testimony?

Mr. THOMAS. You are correct. We talked about that while you were out, but let me expand.

The 50 percent was in the Crampton report that you discussed last week with Mr. Crampton. As a matter of fact, in that report he indicated that possibly as high as 50 percent of the sites would qualify for removal action as a result of fire and explosion potential.

In questioning he backed off on that and indicated he shouldn't have used that terminology. But in any event, that is where the 50 percent came from. I initiated an action of some time ago to ask the regional offices to review all the priority sites to determine whether removal action should be taken, whether they would qualify for removal actions based on a broad review of both the fire and explosion issue, but also air, surface, water and ground water, all five areas, to determine if there was immediate threat to public health or safety, whether it was from air emissions, drinking water contamination as well as the fire and explosion issue and coming in with a determination to us.

That process is under way. Bill Hedeman had a conference call with the people in the regions this week. They indicated there may be as many as 110 of those sites of the 419 that may qualify for immediate removals to stabilize the site where there may be an immediate threat, not just—I want to emphasize this—not because of fire and explosion; that may be a factor in some sites—but, because of other categories, drinking water contamination because of ground water or surface water problems, or air emission issues.

What I wanted to do was assure that if there was a threat that would qualify for immediate removal at any of the major sites that we went ahead and took care of that issue through a removal action while we were continuing along our remedial action at the site which is the long term complete remedy for the site.

That is where my figure of one-fourth came from. It came from a thorough review of the sites by the regional offices. The 50 percent figure came from Mr. Crampton's interviews with some people in the Agency.

It was not a thorough review of sites and was based on comments made initially in the review of the sites that up to 50 percent of them ranked at some score as far as fire and explosion; even though it may have been very low in a minimal threat, there was some ranking there.

Mr. LEVITAS. Mr. Brown, during hearings that we had earlier on this subject when Ms. Lavelle and Mr. Perry were still at EPA, it became very obvious that there were conflicts of personality as well as policy between those two offices.

The report we received last week in testimony has the following statement in it:

> The issue evoking perhaps the most intense feeling among our interviewees concerned the role being played by enforcement lawyers in the Superfund program. Technical staff of the remedial program at OSWER headquarters and in the regions are critical of what they perceive as the lawyers' effort to second guess program judgments and block them from taking responsive clean-up actions at sites.

First, I think it would be appropriate for you to comment on that statement and then, if that is accurate to any extent, what is happening now?

Mr. BROWN. I think it is fair to say that Government attorneys are rarely loved by their clients. There is a constant tension between an attorney's role of looking at the law or the policies of the regulations and providing advice, and a program manager's diagnosis to move on quickly with their business.

I think the enforcement attorneys fall sometimes into some of those problems.

I think, to use your analogy that you used last week of looking back, looking forward, I think things are looking well. I have certainly enjoyed working with Mr. Thomas. He has been very decisive and several things have occurred in the short time he has been here that could, arguably, should have occurred earlier.

Insofar as looking back, there are some problems and one I would touch on is the role of the attorney and the role of legal advice.

Mr. Crampton's lexicon right now of attorney/client role I think is a fine role so long as everybody understands it. That is, that the attorneys are the implementers and advocates; they are not the policy setters. Therefore, they shouldn't be viewed as that. The problem comes that sometimes some Government managers will come to the attorneys; they will wish to take a certain course of action; the attorney will say, well, based upon our interpretation of policy or the problem with precedent or whatever, you would encounter these problems or we may not think that is a wonderful way to go.

In my private practice managers generally take that advice and go ahead and dó what they wish to do having been advised; in the Government there is a tendency to move for consensus and when someone does not concur or support your course of action, but has a negative opinion, many times—there are a lot of times—that people attempt to get the attorneys to change their mind.

I don't know that you are ever going to be able to overcome that because an enforcement attorney is a parochial individual; they look from a legal perspective opinion, like a surgeon looks to cut, and the higher manager has to look to the enforcement attorneys who are looking at a smaller part of the picture. They are a parochial individual.

Mr. LEVITAS. The problems that existed in the Lavelle/Perry period which I think are pretty well documented, do you see those now as being a matter of the past?

Mr. BROWN. We are now in the midst of studies for Mr. Ruckelshaus and Mr. Ruckelshaus' higher level managers having to do with strategies and reorganization. It would be too early to say that all of these are a thing of the past because a lot of the relations of the future will be determined upon enforcement strategies and the organization to meet those strategies.

I would say that one of the things that people may not understand how important it is to the attorney, some of the things happening now are two things that Mr. Thomas helped push; the site classification, the sitting down between the people at the fund end and enforcement end and divvying up, to the extent we can, the sites, is a tremendously helpful thing to the attorneys.

We have unfortunately in the past—we would be midway through a site as a case and it turns into a fund site with the

broader interest. Granted, the public is protected. You have to understand that, but the attorneys have put their time and effort and it has come to nothing then, and it is denied gratification.

So that is something that has been extremely important.

The policy to go in with a remedial investigation feasibility study first is a tremendous boon because in the past, many times at my level or higher, settlements would be presented to managers where the Government didn't know the total remedy at the site or what the remedy would cost. That is a very hard thing.

I don't care how a department attorney feels, it is an extremely hard situation to negotiate a settlement when nobody is certain what it will cost or just what it is going to be.

Mr. LEVITAS. We are probably going to get into that in considerable detail as we look at the Seymour, IN, situation. Some of those concerns are very clearly there; isn't that correct?

Mr. BROWN. I still have scars, yes, they have not healed and we can easily discuss them.

Mr. MOLINARI. Will the gentleman yield?

Mr. LEVITAS. I would be glad to yield.

Mr. MOLINARI. I have a question I wanted to ask later, but it would be well to ask it now. In the updating of the national priorities list, will the criteria for evaluation and designation remain those included in the MITRE Corp. scheme currently in use?

Mr. HEDEMAN. At the present time, yes. I think Lee will want to examine in detail the hazard ranking system and the MITRE approach to that to see if there shouldn't be some changes made to that given discussions to that effect by, among others, the Office of Technology Assessment in their recent report.

To do that, we would have to, of course, go through a rulemaking because the hazard ranking system is part of the national contingency plan but I do intend to bring Lee up to speed on not only what that system is all about, but the issues involved with it to see whether we want to maintain it or move to change it.

However, in the interim, we will be using that system to promulgate the final list of sites which is expected to occur about the second week in July and also to move to update that list, also scheduled to happen around the end of July.

Mr. MOLINARI. If they do come up with a different system of classification—maybe Mr. Brown should answer this question—how would that affect enforcement priorities of your office?

Mr. BROWN. We are responsive to the fund. It is my interpretation and I believe the current interpretation that the fund is the major player, therefore, those sites at which the fund can take action we should step aside. The sites at which the fund cannot act, for example, in a State without available matching money, something like that, then that becomes an enforcement lead and of course we have to then devote our resources in priority order to those that present the highest risk and do not have a logical possibility of fund action.

Mr. MOLINARI. Thank you.

Mr. ROWLAND [presiding]. Thank you, Mr. Molinari.

Mr. Lucero, does the report's description reasonably portray what is going on? Does it make any difference if the lawyers are in

a separate branch as is the case now rather than working directly in your office as before?

Mr. LUCERO. Excuse me, sir. Are you referring to the part of the report that suggests moving the attorneys closer to the program office or a different section?

Mr. ROWLAND. I am referring to the comment the chairman just made.

Mr. LUCERO. As to the relationship?

Mr. ROWLAND. Yes.

Mr. LUCERO. I believe, sir, that the reorganization discussions, which I understand are ongoing, will inevitably encounter the problem that for every solution that they present—that is the reorganization would present—it probably will present a new problem and that it undoes something the current organization may have solved.

I tend to believe personally that the way we will make this program work better is through a series of management procedures and the people involved in it. Right now, I think the people involved at the top of the various programs as well as some of the management changes that are being made both here and in in the Office of Legal and Enforcement Counsel will benefit that, I think I can honestly say that relationships, while there are differences of opinion, are moving forward positively and I don't know whether having the attorneys report to my office directly or having my office report to the attorneys or create a new office where everybody reports to them for enforcement purposes makes any difference really.

Others will disagree with that. I am just giving my personal view. One part of the report that I thought you were referring to about having the attorneys in proximity to our office is in my opinion as substantial an issue as anything else raised in the report. We found that just the physical separation of the offices, regardless of who they report to, has handicapped our ability to work well together. Even though we are not separated by a large distance, delays communication, takes away that ability to resolve problems quickly. This is a problem that the Agency has been working on but somehow the movement of people and space changes in a Federal bureaucracy take a long time.

We are still waiting for it to happen.

Mr. ROWLAND. Thank you.

Mr. Thomas, you commented in your opening statement that we don't know the effect of certain chemicals on the human body and certain assumptions have to be made. Would you expand somewhat on how these assumptions are made, just how they are handled now?

Mr. THOMAS. The kinds of things I was referring to, Mr. Chairman, are both those chemicals that we find where there is little scientific knowledge of the health effects as well as those chemicals we find where there have been assumptions made as far as health effects on individuals are concerned. As an example, and I think you are probably familiar with this, there is quite a debate as far as the impact of dioxin on humans is concerned. The kind of advice we receive and assumptions we base our actions on are those provided by the CDC which we see as the Government's health effects

agency basically that works with us and that Congress delegated responsibility to for certain portions of the Superfund Program.

Certain scientific assumptions are made about health effects of chemicals based on studies on animals. These assumptions have been made after long study of their general predictive value, and in turn provide us with recommendations which are available in the short run as opposed to the kind of epidemiological studies that would be required over long periods of time to conclusively establish as to their effects on humans themselves, in many cases after effects which could have been averted or realized.

Mr. ROWLAND. Do you follow pretty well what the CDC does?

Mr. THOMAS. We do as far as health effects recommendations, we work closely with them. As a matter of fact, we have a representative of CDC in each of our regional offices. They are helpful and participate actively as a member of the team that deals with the Superfund sites.

Mr. ROWLAND. Thank you, Mr. Thomas. Mr. Lucero, a statement made by you before this subcommittee in March of this year, has excerpts which are:

> I think with regard to the regions, when I came to the program, relationships with the regions were disjointed, with some regions they were good, some bad. I think we have—at least I have a good relationship, very supportive. I try to support them and I don't think that we have this problem to speak of anymore.

In the report we received in May, it notes:

> We found situations where as many as 16 concurrences by Headquarters staff that had been required for some routine regional request. Particularly frustrating to Regional staff has been the lack of accountability back to them from Headquarters reviewers regarding the reasons for delays or for other adverse consequences of their decisions.

On the next page, the May report goes on to note:

> The authority of the Regional Administrators has been likewise undermined by the multilevel concurrence process and by the obligation of the Regional Counsels to report directly to the General Counsel in Headquarters. As a consequence of such constraints, in an atmosphere as intense and as strained as that surrounding implementation of the Superfund Program, many mid-level managers at both Headquarters and the Regions have drawn the disheartening conclusion that high-level bureaucratic shuffling has been responsible for braking the momentum needed for full-scale implementation of the program.

Can you elaborate some on the apparent inconsistency between these two?

Mr. LUCERO. Certainly. First of all, the answer to the question that I was asked about in March was really a response for the part of the program, part of the Superfund Program for which I am responsible. That is technical enforcement support. I come from a region—I think my testimony then started with that statement—I have a fair sensitivity to the kinds of concerns and I have been trying to move many of the responsibilities of my office out to the region.

It has taken a long time and it is only recently that I was getting a push from Mr. Thomas among others to move it faster than I was able to accomplish. That has helped a great deal.

I think that most of those statements don't necessarily relate to the technical enforcement support area. I think they were probably in reference to other aspects of the program. I would have to say

these are probably Mr. Hedeman's area of concern. As to the peoples' view about them, I would have to let him explain it.

Mr. ROWLAND. How do you feel about the future now, generally speaking, insofar as having to go right to the top for every small decision?

Mr. LUCERO. First of all I don't think it is necessary any longer. As a good example of that, I had suggested to Ms. Lavelle in January which was the month before her departure that it would expedite the process and the enforcement area if some of the concurrence authority that she exercised could be delegated because every decision had to go to her and if there were a disagreement between herself and someone else it would have to go higher.

Mr. Thomas has delegated most of those decisions to me as a step to some extent toward the next activity which will be to give those authorities by and large to the regions, and it has expedited the process because there is limited amount of time, and I would say basically I am positive about it.

Mr. ROWLAND. Mr. Hedeman, would you comment on that?

Mr. HEDEMAN. I felt in reading that portion of the Crampton report in terms of the 16 concurrences that perhaps it was a reflection of isolated incidents.

To begin with in the real live situation in terms of EPA just as perhaps in the Congress this morning, given Mr. Levitas' remarks, there is the normal amount of game playing and I have found that as regions are working on a particular project that they will send forward they often will pursue points that are considered inconsistent with the guidance that exists and often as a result require a fair amount of review and concurrence in headquarters to achieve that resolution.

I have a sense—without getting into details and this is the difficulty you have with any report such as the one furnished—when it speaks in generalities rather than specifics it is very difficult to get a handle on exactly what problems they are talking about. But I have a sense there is a fair amount of at least some degree of frustration in the regional offices at losing in some of the game playing.

To a certain extent I would say that the regions perhaps were playing the game because they had problems with the policies and problems of the direction in which the program was going and that that probably was a legitimate action to enter into.

By and large I have felt, however, that the relationship that I have with the regional offices is also a fairly positive one. The difficulty that the regions have been expressing to me is that essentially they are responsible not only for managing the funding part of Superfund, the funding of projects in the Superfund Program, but also the same people are providing the technical enforcement part, in other words, those people exist in the regions in a complete unit.

At the same time, however, they are responding to the needs and demands of the enforcement counsels in the region who have a separate line of reporting authority into EPA.

Also, the regional counsels looking at the issue from the standpoint of any basic legal arguments or legal issues that may arise, to pull all that together, which is generally done through a concur-

rence process, means that there is not likely to be unanimity of thinking. And logically from that comes a frustration.

The question you have from a management perspective is how much of that needs to be pulled together. If guidance coming out of headquarters into the regions is more definitive than it has been and if the decisionmaking can be decentralized to the point where a large amount of that concurrence so to speak can be eliminated, my own feeling is that that can be accomplished, that the concurrences can be eliminated or at least significantly reduced and in the end that the attention that has existed between the various components of the Superfund Program which I think went beyond creating attention to somewhat destructive attention can be significantly reduced.

Mr. ROWLAND. Mr. Brown, would you comment, please.

Thank you, Mr. Hedeman.

Mr. BROWN. I think Mr. Hedeman touched upon a very important point. Lawyers don't make cases, cases are made by investigators and technical people discovering something is in violation of the law or a regulation.

Lawyers are implementers of getting facts in a legal manner in front of a legal body. One of the problems is that a case does not exist unless it is referred by a regional administrator but with concurrence of the regional technical people that there is a case.

Some of the frustration has been that a case is referred, the attorneys will take it over, they will then as Mr. Hedeman pointed out, look to the technical people to support this case. In many cases if they are contested there is a large amount of discovery burden, there is a tremendous amount of drain of funds and use of the people, there are experts in the cases. This is resource intensive. This falls on the same shoulders of the same people who are required to report to Mr. Lucero having to do with administrative enforcement and have to report to Mr. Hedeman having to do with Superfund expenditure and sites and in some cases having to report to Mr. Skinner about RCRA areas.

Therefore, litigation many times becomes unpopular when the case referral turns into a real case as opposed to settlement. This creates tension because the lawyers are worried about not beginning a case unless we are serious about being able to go to trial for fear we project an image to the regulated community that is less than firm and the lawyers are always concerned about precedent because this is a very new area.

Every new case is landmark if you will. So you have the attention of the lawyers wanting the best possible case and all the support they can get, placed upon the shoulders as Mr. Hedeman put it, of people who have several different masters and several different tasks they have to perform and all of them as most people I have been around within the Government for 18 years now, feel they are under loved, underpaid, and overworked. So it is a question of priorities and the lawyer is sometimes abrasive in that calculus.

Mr. ROWLAND. Thank you, Mr. Brown.

Mr. LEVITAS [presiding]. Mr. Thomas, last week we heard a good bit of discussion and read in the report about the concept of prudent fund management. Words have different meanings, of course,

and somewhat benign words take on sinister meanings. I am reminded of the fact that the Russians, the communists, call themselves the Democratic Republics and clearly they are neither republics nor democratic. Prudent fund management has a good ring to it unless it means what it appears to mean for certain agenda reasons of wanting to do away with the Superfund Program and understate the need for funding, or if the fund was not used properly or adequately or effectively.

I wonder if you could tell me how things are now in terms of this concept of prudent fund management?

Mr. THOMAS. First I think that it is difficult to say exactly what they meant by that on my behalf. It seems the basis is in the statute. The statute talks about fund balancing, with a general intent of balancing the amount of money in the fund with the amount of work to be done.

So you go through the fund balancing process. It talks about cost-effective solutions in different places. You go through a cost-effective approach so I think that it seems to a certain extent out of the basic statute itself comes the mandate of balancing this limited money against all the different sites that need to be dealt with.

The way I have tried to address that, maybe it is a little different than as addressed by my predecessors, that is it seems to me the intent of Congress, and my understanding of the intent of the administration, is to move forward to both identify and assess all of the sites eligible for cleanup. We are in the process of doing that. We have in excess of 15,000 sites that we are trying to better assess as well as determine whether additional sites are involved. That is a process that is underway. I intend for us to accomplish that.

Second, identify them within that number of sites how many would be eligible for or should be within the context of this law, to be cleaned up. How many need to be cleaned up and would be qualifying under this law to be cleaned up.

My intent is to proceed to do that, do them as quickly and efficiently as possible. If the fund runs out before we complete that then there are other opportunities to affect that cleanup, the opportunities are through enforcement actions with responsible parties in some cases, there are opportunities through other sources of funds in some cases, and ultimately there is the opportunity if Congress decides to extend the fund.

But my intent is to proceed with it. At the same time it is to ensure that I carry out the intent that you have in the statute and that is we do use cost-effective solutions. But cost effective to me means that first we identify the most sound solutions, or range of solutions as far as protection of the environment and protection of health is concerned and then select the most cost effective, not that we select the most cost-effective short of a full cleanup but that we complete that cleanup with the most cost-effective solution.

That is one way I am proceeding with it. The other is I think we have to take into account your intent and your specific direction in the statute for fund balancing. That is when we look at a site we do have to make a general determination when we come up with a final solution as to whether this site will blow the top off the fund, if you will, in other words if we have a site and the final solution is that it will cost us $150 million to clean up the site I think we have

to balance that against the large number of sites we have and whether we can expend that much money on it or not.

So far I have not run into one of them since I have been there but the intent of the statute is that I do make a conscious decision in that regard on balance.

Mr. LEVITAS. Your explanation of cost effectiveness and the balancing requirement is significantly different from that which apparently existed before you came there.

Mr. Hedeman, Mr. Lucero, in testimony before the Senate Committee on Environment and Public Works described that policy as being one which I think in one instance Mr. Hedeman said, I think, that Ms. Lavelle had ordered an assessment of sites being completed by the end of the year to verify her view that many of them required no action and that since the 15,000 site estimate can form the basis for an expansion of the Superfund Program, Mr. Hedeman said Ms. Lavelle made it very clear that she was against expanding it and there was other testimony to that effect by Mr. Lucero, similarly.7

The point is that at the time Superfund was enacted no one knew what the future held and I think the ultimate intent of Congress was to deal with the threat of the hazardous waste sites. The first step taken in terms of the Superfund was in no way intended to be the last step to be taken which leads me to my next question.

Are you working with others at EPA now and have you had discussions with Mr. Ruckelshaus with respect to development of proposals for the son of Superfund?

Mr. THOMAS. I have had discussions with Mr. Ruckelshaus concerning this issue. I have not begun any work and I don't believe the staff has on specific provisions that would relate to an extension of the Superfund Act other than in the context of the things that basically we are required to do by the statute.

There are requirements that we provide reports to you with recommendations next year and I fully intend for us to have those reports done and done well. I have been asked the question in some hearings about whether I think there will be a requirement for additional funds, extension of the act—I was asked that in Senate Appropriations Subcommittee hearings and some other hearings.

Basically the discussions I have had with Mr. Ruckelshaus are consistent with the explanation I just went through as far as that fund management is concerned. I think that his commitment is the same as my commitment which I think is the same as Congress' intent, that is that our purpose is to identify and clean up hazardous waste sites, period.

Mr. LEVITAS. One last question that I have just because it is topical today, what role if any is EPA playing in this recent disclosure of the dioxin problem in Newark? Have you been called in on that?

Mr. THOMAS. We are actively involved. It was our sampling involved with the State. It is our regional office in New York that is involved with the State of New Jersey and the city. That is preliminary samples that have come back that showed dioxin contamination at that location. We are in the process now working with the State on more extensive sampling protocol, the Center for Disease Control through our regional office is actively involved.

Our personnel have been there, they were there yesterday. We are actively involved in the State of New Jersey in the same fashion as we work in Missouri and other places on dioxin and following the same course of action, that is preliminary samples come back showing contamination, then go in for a more extensive sampling process to determine the full extent of that contamination and what actions may be required, whether it is a threat to individuals, if it is then we can take action; or whether we are talking about some long-term cleanup effort.

Mr. LEVITAS. When did this matter come to the attention of EPA?

Mr. THOMAS. I am not sure of the exact date. It came to my attention approximately a week ago when the Deputy Director in the New York regional office called me and told me it appeared that preliminary sampling showed there was dioxin contamination and he as working with the New Jersey State officials. Now, that was the specific sample. I think the site came to the attention of EPA several years ago as a potential site of contamination when the Agency was apparently reviewing manufacturing plants and that kind of thing, potential sites.

Mr. LEVITAS. Is this site on the national priority list?

Mr. THOMAS. No, sir.

Mr. HEDEMAN. No, sir.

Mr. LEVITAS. Mr. Molinari.

Mr. MOLINARI. Thank you, Mr. Chairman.

I would like to turn our attention to a topic that I raised earlier today and that is detection and prevention.

We see in the problems we are dealing with a common thread in certain areas. For example, landfills seem to be a favorite target for depositing toxic and hazardous substances. Can you give me an idea as to what actions EPA is putting in place or recommendation for changes in detection and prevention of some of this dumping that is occurring?

Would anyone on the panel care to comment on this?

Mr. THOMAS. Maybe I can respond generally and we can get to specifics. The Resource Conservation and Recovery Act provides the basic mechanism for prevention from the kind of problems we are trying to correct under the Superfund statute, both the regulatory base, the authority then to delegate responsibility and work jointly with States and implement that, including a permitting of new facilities, both treatment, storage, as well as disposal facilities, landfills included, as well as the authorities for enforcement of current operations as we are trying to move into these new fully permitted facilities.

Now, what we are trying to do is, one, we are trying to implement that as aggressively as we can. We have basically got the regulatory framework in place. The last major regulations that came out related to landfills in the permit requirement areas. We have closed regulatory gaps that remain.

Mr. MOLINARI. Let me interrupt because I think my question was not too clear. I am talking about landfills that are not legally permitted. I am talking about one such as Mr. Snyder referred to, Newport, in his district. We have five or six in the city of New

York, municipal landfills where extensive amounts of dumping occurred; in some cases organized crime has been involved.

I have been in several helicopter tours where informants showed me and the chairman a number of local sanitary landfills where large quantities of toxic and hazardous wastes were dumped. These seem to be their favorite targets.

So, as you work in cleaning up some of the mess left by others, I wonder what action do you take in trying to prevent the same thing from occurring in other places throughout the country?

Mr. THOMAS. One of the things that I am taking a close look at is subtitle D of the RCRA statute, that title that deals with open dumps and municipal landfills, solid waste landfills, if you will, to determine just how active we, the agency, have been in implementing the provisions of that.

It is not—the provisions there and the authority of the agency are nowhere near the provision of subtitle (C) which is the hazardous waste area.

But I feel there are provisions there and actions that the Agency could take with the States to be more aggressive.

Specifically, as far as the kind of excesses you talk about of dumping toxic wastes, there are the enforcement authorities we have now. To be honest with you—and I will let Bill and Gene expand on this a little bit—I don't think we have done a lot in that regard as far as municipal landfills are concerned and what could be done to prevent abuse in those areas.

I think some of the things we are doing will have an indirect effect, for instance the action we are taking on closing the gap on small quantity generators. I think that will have impact in that regard.

I think the action we are taking to try to ensure proper enforcement of the transportation, that it manifest the issue we are dealing with, will have some effect in that regard. The action there. So, some of the things we are doing in subtitle (c) in dealing with hazardous waste will have an impact on the problems you are talking about over on open dump sites.

Mr. MOLINARI. Before we hear from the other panel members, let me ask you, sometime ago—I guess better than a year ago—I was invited to the studios of 20/20. They were producing a segment and, because I had been involved in the area, they asked me if I would like to see their entire filming.

What they did was a prime example of what government, whether it is the Federal or State level or a combination of it, should do. They did a marvelous job. They knew of an illegal dumping that was taking place and they watched it come in at the source; they had filming of it; they rented a house at the top of the hill and had their cameras trained down on this so-called refinery.

They showed pictorially the hazardous or toxic chemicals being loaded into tank cars; they showed it crossing the George Washington Bridge. They showed it being delivered as fuel oil and then as soon as the truck took off they opened it up, took a sampling out, sent it to their laboratories and showed how bad the material was.

I couldn't help but be struck by their work on this operation. They developed an open and shut case.

I wonder, if they are able to do such a thorough job, why can't we? Maybe we do. I would be pleased to have somebody respond.

Mr. BROWN. I am pleased to say since September of last year, or the end of September of last year roughly the beginning of the fiscal year, operating with just 21 criminal investigators to cover the entire Nation, we have been able to open over 160 criminal cases of which 60 percent have to do with hazardous waste and toxic substances.

This is, of course, just our opening of cases, but they required those 21 investigators for support, support from U.S. attorneys and FBI places, of course.

So we are happy to say that we have begun to tap this kind of potential that is out there and we are in fact, if anything, somewhat overwhelmed by how successful the program has been with as few people and as early as it has been.

Mr. MOLINARI. I am terribly pleased to hear this. I think this justifies those of us who lend support to the additional funding levels for EPA. I don't want to get into that because I know it is a sensitive area, but the fact is that with but 21 investigators, you have been able, since September, to develop that many cases.

Of course, the question has to come to our minds, why 21? Why could it not be 100 or 200? I am going to ask you a question because the consequences are just so great.

If we could develop a better program by putting more people on, maybe we have to pay more, maybe we have to reach out and get people with the expertise to be able to ferret out those responsible and bring them to task.

Mr. Brown, I would like to have your assessment on whether we shouldn't employ more people in that area.

Mr. BROWN. Mr. Molinari, as I indicated earlier in response to a previous question, enforcement attorneys are very myopic people so within our world, we all feel that given more we can do so much more. But that is why you have administrators and comptrollers and OMB's and everything because I am sure everybody who is enthusiastic about their programs feels a little more or a lot more is necessary and somebody higher than us has to make the balancing decisions just as the decision to have a stop sign versus a stop light at an intersection.

Mr. MOLINARI. We had testimony not long ago where we had something like 21 lawyers with 1 secretary, 1 typist serving 20 or 21 lawyers. What was happening is the lawyer who gets paid a heck of a lot more than a secretary was spending a good deal of his time typing himself. I am fully confident that that kind of thing will be put behind us with the new administrator. I am very much concerned about prevention and I am pleased to hear you say that is what we need in order to address that portion of the problem.

I don't see enough of that being done out there. I am not one who shares the view that we have to turn this area over to the States. Last week, we had one of the leading officials in the Department of Environmental Protection of New Jersey indicted. We have gross negligence in New York City. I had the unfortunate experience of visiting the Fort Worth area not long ago and, along with the chairman, stumbled on a very serious problem in the Fort Worth, TX, area. What I found was that the Department of De-

fense was not cooperating with the EPA, that EPA had requested on five separate occasions sampling information and testing information and was refused. I went public with the information and suddenly at that point in time there was all kinds of cooperation.

You know, it seems to me that what we are learning we are learning from trial and error. We stumble on these things and suddenly we realize that people like the Department of Defense, who you would expect to have the latest equipment and would be the most responsible people in the country, are not. I would like to ask, does anybody know what the current status is of the problem in Fort Worth and what tests have been made and what the results are?

Mr. HEDEMAN. The monitoring is still taking place and I can provide both for the record and call you personally on the current status. I just have not been briefed in the last week on that situation. Monitoring wells have been drilled, there is an exceptional cooperation between the Air Force and I believe it is General Dynamics.

Mr. MOLINARI. Yes.

Mr. HEDEMAN. And our EPA regional office is involved. All of this, I think, is largely attributable to your personal involvement in that situation. In addition, there is somewhat of a catalyst to that. Lee and I were briefed last week by the Defense Department, all four service branches, on the progress they are making in responding to the entire problem of hazardous waste on their sites. Out of that briefing came, I felt at least a very positive direction in terms of cooperating with EPA, but also commitments to responding to problems which they recognized had long been unattended as well.

Hopefully we also will be able to consummate some form of agreement between EPA and the Defense Department on the entire spectrum of hazardous waste spills and abandoned sites within the next several weeks.

Mr. MOLINARI. That is very good news to us as you might expect. The chairman plans to hold hearings specifically on that subject because we have been less than satisfied with what we see at the Defense facilities throughout the country. I think, Mr. Chairman, you would want to be kept advised on the situation.

Mr. LEVITAS. I would ask you to keep us currently advised on the developments between EPA and the Department of Defense. It has been a matter of great concern to me for several years now and we have had some recent testimony concerning the problems there and Mr. Molinari's efforts in the General Dynamics matter, I think, have brought it into focus and I would like to be kept currently informed of what progress is being made.

Mr. HEDEMAN. We did suggest, I believe, that the Department of Defense does plan to seek you out and hold a similar briefing to the one we were given to give you at least an overview of their program. But I also will keep you personally advised.

Mr. LEVITAS. Thank you.

Mr. MOLINARI. I just have a couple other questions.

Could you just describe to us the current working relationship between EPA and NEIC? NEIC played a very important role in that Fort Worth problem we had with General Dynamics and the

Air Force. Frankly, most of us were not even aware of the existence of NEIC until about 6 months ago. But we found them to be a very useful tool in helping to provide some of those very difficult answers.

Go ahead, Mr. Brown.

Mr. BROWN. I would like to start by noting that NEIC is part of EPA. It is part of the enforcement council area and it is an extremely versatile and valuable body because they have the ability to be, if you will, a technical Swat team. They have a high degree of sophistication and they have historically been on the cutting edge of several of the more sophisticated testing protocol and other things for the enforcement areas.

They are the leaders in terms of chains of custody and how to preserve evidence in a technical case, and they developed almost singlehandedly the Ladar, laser radar combination, that is used to measure air emissions, and has been upheld by several courts.

Again, from a parochial standpoint, it is a body that we in the enforcement area feel, with a very few people and outstanding management by Mr. Gallagher for years, has been able to produce a tremendous bang for the buck, if you will, of support for enforcement, and it is proving to be quite valuable.

In some of those areas when we were talking about regions being overwhelmed, somebody alluded earlier, your example, I believe, was Stringfellow. What will they do with the rest of their problems?

This week I approved in principle the idea of putting up to six of the NEIC's people in the support of that case because the region indicated technically they are becoming overloaded. My trouble is, again, I have my own internal fund balancing of how far I can spread NEIC versus the numerous regions and problems that we have.

Mr. MOLINARI. We are hearing a lot of good things today, and it makes me very pleased.

Let me ask you this: You refer to them as a Swat team. Does that mean that when a problem surfaces that you folks might call on NEIC to send somebody to the scene to make an early inquiry as to what might be happening and to give you a technical evaluation of the problem?

Mr. BROWN. Yes, sir, if I can be permitted to blow NEIC's horn, which I think it deserves, they were the forerunner of the initial work in the Niagara frontier area. They came in because it was beyond the experience of any region and to assist region 2, for example. Or, for example, State-Federal cooperation, the local Washington Post covered a large contractor being convicted by the State of Maryland recently for some environmental offenses. Within the last week prior to trial, NEIC was called in at the last minute, did the organization and audit of the evidence, and we have received several complimentary letters attributing almost the success of the case to that last-minute effort.

So they are a group of extremely well trained and highly motivated people who on almost a moment's notice can do a lot more than you would expect.

Mr. MOLINARI. I share your view about Mr. Gallagher. I have found him to be tremendously cooperative, very knowledgeable,

and extremely valuable to have on your side, and I have called on him several times.

There were a couple of manuals that were put out by NEIC. When Mr. Perry appeared before this subcommittee, I asked him some questions about them, and one was entitled "NEIC Procedures Manual" for the evidence audit of enforcement investigations by contractor evidence audit teams. This was dated September 1981. I could be mistaken. My recollection was that this was never adopted by EPA.

Does anybody know whether that is so?

Mr. BROWN. No, sir, in the sense of being adopted, it would be Mr. Gallagher's desire—and, of course, all lawyers' desire—that every time a site is investigated those meticulous procedures were used, because you would have a perfect case.

There is, of course, the balancing off of the program, people's desire to do things other than always be logging items. But, in the sense of the evidence audit, Mr. Gallagher has internally and through a contractor arrangement an excellent evidence audit situation that is being used in several cases.

Mr. Lucero has been working with Mr. Gallagher and has helped to provide additional funding for that contract, if I am correct, to where we are able to expand that to more sites than we thought we were going to be able to use.

So the evidence audit procedures and the evidence audit ability of NEIC is one of the major things we are using right now in case preparation.

Mr. MOLINARI. There was another excellent manual put out by them which was entitled the "Manual for Groundwater Subsurface Investigations and Hazardous Waste Sites."

I haven't read it thoroughly, but I am fascinated because of the many sites that we witnessed throughout the country. It seems like it is extremely difficult to determine what is there and how to take remedial steps to cope with the problem.

I think that is addressed in here.

Do you know whether that is an accepted manual at EPA today?

Mr. BROWN. From what I know about it and, again, I am having to speak as a lawyer, sir, that is something that NEIC is proposing for use to the regions and perhaps to some of the program people, and I would defer to anybody else at the table that knows more about it at this stage.

Mr. MOLINARI. That was my understanding. Now that is dated July 1981, a long time ago, and the understanding that I had, at least when we had Mr. Perry here, was that for whatever reason, it had not been adopted.

I found that difficult to understand and accept. Is there anybody on the panel prepared to be able to pass upon that or is it within somebody else's jurisdiction?

Mr. LUCERO. I might just add that formal adoption has not been achieved and I think that is correct. In terms of reflecting understanding at that time and how to proceed at a site, it was a good statement and I would note with regard to ground water that I think we have talked about this before.

We are at the edge of the technology basically, and while I have not reviewed that personally, talking to my own staff and my own

hydrogeologist, I am advised that we are refining that continuously and we probably have gone beyond the understandings reflected in there in terms of technical procedures and methods.

That may be out of date. I can get you more recent information if you would like.

Mr. MOLINARI. I would appreciate that if you would give me a call on that, too.

Just one last question. We have heard a lot about NEIC and how good they are, and I think we all agree on that.

Going back to General Dynamics, at the Air Force site at Fort Worth, were any personnel from NEIC dispatched to the site to make an onsite inquiry rather than an analysis based on material that was furnished to them by General Dynamics and/or the Air Force?

Mr. BROWN. I am only aware of an analysis that NEIC did based upon materials and that Mr. Gallagher was personnally in contact with Mr. Lattaway, the hazardous waste managers for region VI on this site.

I know Mr. Gallagher has offered to provide assistance as needed, but I don't know and perhaps some of the other gentleman here at the table can answer whether NEIC has actually had people on the ground in that problem.

Mr. MOLINARI. Anybody?

Mr. HEDEMAN. I personally can't answer that other than to say that in addition to the NEIC advisory capacity, we also have technical people within our region VI office, and also contractor support from Roy F. Weston, who I do know were on the site and are providing the services.

Mr. MOLINARI. I just want to conclude by saying this, Mr. Chairman.

I have been very dissatisfied with what I would call a lack of cooperation from General Dynamics, and the Department of the Air Force, particularly in the way this matter surfaced.

It was kept under a cloud of secrecy. Indeed, the law requires them to notify EPA and there seems to be quite a lapse of time between the time they had knowledge of the condition and the time when they reported it to—I think it is region VI.

Then after that, we could not get any information from them. It was like pulling teeth.

In the meantime, to use NEIC's own statement, we had a potentially hazardous situation of great magnitude there, so that as one who is trying to make an assessment as to how serious it was, we were totally frustrated initially until we went public, then everything changed and everybody was headed to Washington and there were more meetings.

Finally, EPA got the kind of cooperation they had been seeking for too long. But I just wondered in view of those circumstances and the fact that it did appear to be so potentially serious, why we could not have dispatched somebody from NEIC to go down there so that we could get some straight information.

I am wondering whether that is something that we should not develop in the future.

Mr. HEDEMAN. Part of the problem we have had with the Federal facility issue and particularly the Defense Department, which I

think has been to a large degree solved also as a result of this, has been access onto the facilities.

So that, yes, I think our region could have done that on the assumption that they could have gotten onto the facility. They had done some testing and monitoring on the parameters of the facility or right outside the base.

So we had a half a piece of information. Since this time, I have received communication from the Defense Department in which they have instructed the base commanders and whoever else handles that type of thing that either EPA personnel or State personnel desiring access to the facilities should be allowed to come on at convenient times in terms of the operating facility in order to gain this information.

So there has been as a result of this also an outreach in that regard.

Mr. MOLINARI. Are they allowed to conduct tests of their own onsite?

Mr. HEDEMAN. Yes, they are.

Mr. MOLINARI. Pleased to hear it.

Thank you very much, Mr. Chairman. No further questions.

Mr. LEVITAS. Thank you very much, Mr. Brown, Mr. Lucero, Mr. Thomas, Mr. Hedeman. We appreciate your cooperation today in connection with these ongoing hearings.

They will continue. The cooperation that you are providing us is going to make the record upon which our recommendations of legislation will follow and I want to express my appreciation to you for participating today.

The subcommittee will stand in recess subject to the call of the Chair.

[Whereupon, at 12:45 p.m., the subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

MANAGEMENT REVIEW OF OSWER PROGRAMS

REPORT OF FINDINGS AND RECOMMENDATIONS

BACKGROUND AND CONTEXT

This management review was first commissioned by the previous Administrator after reviewing the program performance of the Office of Solid Waste and Emergency Response (OSWER) as portrayed in the first quarter FY 1983 Management Accountability System Report. Shortly after the Office of Management Systems and Evaluation (OMSE) began the review, Lee Thomas was appointed Acting Assistant Administrator for Solid Waste and Emergency Response. The new OSWER management team endorsed the management review and agreed upon the following direction:

1. Provide an agenda for action by developing a new set of management options and alternative scenarios for Superfund and RCRA over the next two years to assist the Administrator and OSWER Assistant Administrator in setting goals and objectives for these programs.

2. Analyze existing management procedures and operating practices and propose operational or structural changes to eliminate barriers to program success.

3. Review current OSWER planning and management information systems and develop a new set of key program indicators to be monitored by the Administrator and Assistant Administrator for OSWER.

The OSWER management review was designed to extend over a six-week period (March 7 - April 15, 1983), and was intended to provide an assessment of the current situation and recommendations for action. As an agenda for action, this review is not intended to provide a detailed critique and analysis of individual OSWER management systems. Although work in this area is needed, and OMSE is prepared to provide it, we have tried to address broader issues of more immediate concern to program decision-makers in this report.

The review team, composed largely of staff from the Management Systems Division, included six persons from OMSE and a Regional representative. In addition, two representatives from the AA/OSWER's immediate office participated in a number of Regional and Headquarters interviews. The review consisted primarily of interviews with over 60 Headquarters and Regional managers and staff. The OMSE team also researched program materials including the National Contingency Plan, OSWER Strategic Plan and Management Information System, guidance documents, briefing books, issue papers, and other relevant documents.

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The findings and recommendations contained herein were formally reviewed with the Office Directors and senior staff of OSWER, the Acting Assistant Administrator for OSWER, and the Agency's 10 Deputy Regional Administrators. During the current interim period OSWER senior managers have begun work to correct some of the problems described in this report. The authors of this paper intend that its findings and recommendations will lend impetus and support to the corrective work already underway.

MAJOR FINDINGS

1. Significant Program Accomplishments.

Among our principal findings is the conclusion that both the Superfund and RCRA programs have achieved a number of significant accomplishments in the relatively short period since implementation of these programs began. OSWER staff deserves considerable credit for having established the basic operating principles and administrative prerequisites for two extremely complex and challenging programs.

- o Superfund program framework is established.
  - OSWER published the draft National Priority List of 419 sites in December 1982. It has moved on over half (269 sites) through enforcement actions at 118 sites, Federal/State remedial or removal responses at 85 sites, voluntary actions at 25 sites, and cleanup plans currently underway at 41 sites.
  - The National Contingency Plan, which guides Superfund implementation, is in public use.
  - OSWER has awarded the three major support contracts for remedial activities (Zone 1 and Zone 2 contracts) and removal activities (technical assistance team contract). In addition, zone contracts for emergency response activities have just been put out for bid. This will enhance program responsiveness in a number of areas.
  - As of the end of the first quarter FY 83, the program had obligated approximately $227.3 million for removal and remedial activities.
  - The Agency has negotiated private party cleanup contracts worth $119 million at 33 sites.

- o Critical elements of the RCRA program are in place.
  - OSWER has promulgated RCRA's major program regulations; land disposal and incinerator rules were published last year.
  - Thirty-five states have obtained Phase I interim authorization enabling them to operate major portions of the program on their own. Eight have already obtained Phase II authorization, with 23 states projected to obtain Phase II by the end of the year. Phase II authorization allows States to operate their own RCRA permitting program.
  - The manifest system which was designed to track hazardous wastes from generation to disposal is being implemented by the States.
  - In FY 82, EPA and State agencies conducted nearly 15,000 facility inspections at interim status sites.

2. A need for clear goals for OSWER programs.

Perhaps the most significant overall finding for both RCRA and Superfund is the need for the Agency to develop a firm definition of program success and to provide clear goals and objectives against which managers can measure progress and performance in OSWER's programs. Both of these programs have been forced to respond to a multitude of constituencies, inside and outside the Agency, all of whom have had competing ideas about what should be accomplished. Not even an infusion of additional resources, should it be forthcoming, can substitute for OSWER management's need to make clear choices now regarding its RCRA and Superfund program priorities, both for the near term, and for the years to come. Sections 3 and 4 elaborate on this fundamental conclusion.

3. Competing RCRA priorities.

A critical challenge to RCRA program management is deciding the relative emphasis it must place on several competing program imperatives. Currently, RCRA management juggles at least four separate major program activities but lacks a consistent program management theme. In large part, this problem is caused by the fact that RCRA program managers must struggle to satisfy several important constituencies--Congress, OMB, State agencies, the President's Task Force on Regulatory Relief, EPA Policy staff, and many others. Each of these stakeholders maintains a different opinion concerning which activities should be emphasized in the program. The competing activities include: (1) promoting and

processing State authorizations, (2) updating existing regulations and developing new ones to fill in the gaps (including listing and delisting of hazardous wastes), (3) permitting activities, and (4) enforcement. Each of these program elements comes in conflict with the others at various times. Agency management must come to terms with the conflicts inherent in such competing demands and enhance consistent decision-making by balancing and focusing program goals and objectives.

4. Conflicting Superfund Goals and Management Constraints

Our interviews with Headquarters and Regional managers demonstrate that policy makers and program managers throughout the Agency disagree on the definition of program success in the Superfund program. Their conflicting goals and perceptions have frequently led to interoffice disputes that have seriously interfered with efficient administration of the program. In retrospect, it is clear that, despite its accomplishments over the past two years, the Agency never mobilized its full resources to implement the program in a coordinated way. The net result is that, due to the lack of clear program focus, each developing issue has undergone a process of painstaking conflict resolution, wastefully reiterated at each level of the management chain. An unwarranted number of decisions have been referred ultimately to the highest levels, capping a tortuous procedure which slows the program down. For instance, acknowledging the influence of outside forces, it is nonetheless within the Agency's power to emphasize either an aggressive site response program or closely guarded management of the Superfund resources provided by Congress. Faced with such a choice, EPA's Regions have fought persistently for the former, while EPA Headquarters has more often opted for the latter. The result has been bureaucratic stalemate with the practical effect of restraining broad-scale action to clean up sites in need. Some examples of key conflicts and constraints are set forth below:

- Prudent Fund Management vs. Aggressive Cleanup.

  A common perception, especially in the Regions, was that top EPA policy makers in Headquarters were primarily concerned with "prudent fund management," that is, careful conservation of the $1.6 billion available under Superfund so as to limit the long-term demand for scarce Federal resources. This message had a significant dampening effect on aggressive front-line cleanup activities in the Regions through the application of restrictive criteria for Federal action at a time when pressure for action by States, Congress, and the public was becoming increasingly intense.

- Private Party vs. Fund Financed Actions.

  A closely related policy conflict concerned whether the Regions should emphasize early negotiations with presumed responsible parties in order to contribute additional money to the Fund or initiate timely removal or remedial actions and seek to recover the costs in subsequent enforcement proceedings. This conflict pitted the enforcement staff, principally the Office of Legal and Enforcement Counsel (OLEC), against the Superfund program in long and protracted debates over appropriate methods to be followed at almost every site, delaying decisive action on either strategy.

- Conflicting Actions to Achieve State Cooperation in Superfund Cleanup Program Activities.

  EPA's early statements encouraged States to undertake responsibility for Superfund remedial actions. Shortly thereafter, EPA policy decisions effectively frustrated this objective by requiring a 10 percent State cost share for upfront planning activities. Further, EPA asked State legislatures to commit a full State share for construction costs at the outset of planning and clean up activities, a point when States had no way of knowing what the final amount (including operation and maintenance costs) would be. While some mechanism was needed for States to share the risk in expenditures they called forth from the Federal fund, neither of these specific requirements was called for in the Superfund legislation. Moreover, although it has become apparent that these requirements are serious impediments to State cooperation, EPA's top program policy makers have taken no effective action to moderate their impact on the program.

- General Reluctance to Take Risks.

  The majority of our interviews confirm that the general OSWER management "culture" has not been supportive of risk-taking. The sequential steps required to obtain approval for even the most ordinary of commitments under Superfund exceed any imaginable need for orderly process. We found situations where as many as 16 concurrences by Headquarters staff have been required for some routine Regional requests. Particularly frustrating to Regional staff has been the lack of accountability back to them from Headquarters reviewers regarding the reasons for delays or for other adverse consequences of their decisions. The entire process is geared to eliminate the risk of mistake through an active decision, while accepting the risk implied by delay or inaction.

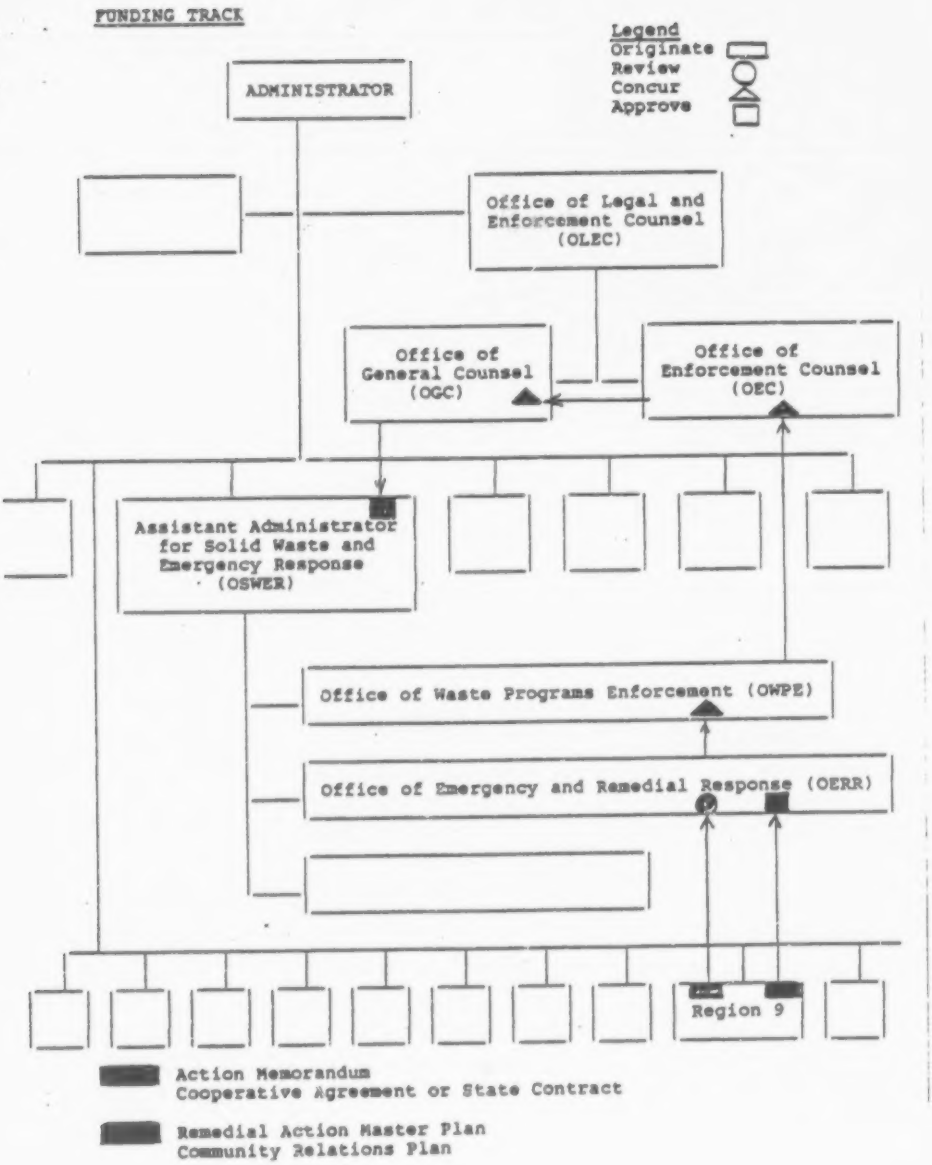
- Serious Operational Constraints.

  During the past two years, the Superfund program has operated under a number of other serious operational constraints. Agency managers erected these barriers for the purpose of management control, but their effect has been to foster a bias toward slow response at priority sites up and down the line. Authority for program decisions is broadly dispersed among OSWER, OPRM, OLEC, and sometimes other offices. Often OSWER has to obtain formal concurrences from other offices before it can take action, as the chart provided by Region 9 on the following page illustrates. Contrary to our announced intention, "top-down" management simply has not existed at Headquarters for the Superfund program. Furthermore, because of a persistent pattern of disagreement between the Assistant Administrator for OSWER and the Associate Administrator for OLEC, decisions of any substance have been routinely elevated to the highest management levels, denying to next-level managers in the Superfund program the clear mandates they need to direct their own program functions. Far from the ideal of "top-down" management, the program has endured something more akin to management by hung jury.

  The authority of Regional Administrators has been likewise undermined by the multi-level concurrence process and by the obligation of Regional Counsels to report directly to the General Counsel in Headquarters. As a consequence of such constraints, in an atmosphere as intense and strained as that surrounding implementation of the Superfund program, many mid-level managers at both Headquarters and the Regions have drawn the disheartening conclusion that high-level bureaucratic scuffling has been responsible for braking the momentum needed for full-scale implementation of the program.

- Regional Resources Not Used to Best Advantage.

  Regional Superfund managers expressed particularly high levels of frustration with the way Headquarters has been operating the program. Regional managers feel under constant pressure locally to take direct action at problem sites. But even though Regional managers are on the front lines in initiating and supervising cleanup activities, Headquarters has lacked confidence in their judgment, considering them too likely to "cave in" to local demands for action. The Headquarters view has been that Regional managers are "too close to the ground" to accurately appraise the relative severity of problems at one site in light of other problems nationwide. The argument


FUNDING TRACK
Legend
Originate
Review
Concur
Approve
ADMINISTRATOR
Office of Legal and Enforcement Counsel (OLEC)
Office of General Counsel (OGC)
Office of Enforcement Counsel (OEC)
Assistant Administrator for Solid Waste and Emergency Response (OSWER)
Office of Waste Programs Enforcement (OWPE)
Office of Emergency and Remedial Response (OERR)
Region 9
Action Memorandum
Cooperative Agreement or State Contract
Remedial Action Master Plan
Community Relations Plan

goes that, since Superfund is new, each decision amounts to a precedent. Since EPA can not afford to have precedent set on the basis of emotional decisions made under strong local pressure, Headquarters should review all decisions in a detached central setting. Whatever the merits of either case (and our examination of the record reveals mixed results on that score), the important thing is that this approach has fostered frustration rather than reinforcement at a time when cooperation is most needed. With little opportunity to take on additional responsibility and become "winners," most of the Regions have resigned themselves to second-class roles in the program.

For example, in every single case but so-called "screaming emergencies" (instances of fire, explosion or other causes for immediate evacuation), the Regions have been unable to initiate actions without Headquarters concurrence. Because Headquarters has been unable, in a number of instances, to issue clear guidance to units in the field, the Regions have found the approval process (on which they must rely to get action) subject to changed signals, multiple drafts of documents, and conflicting directions. Of course, much of this must be regarded as part of the normal learning process as Agency managers at all levels feel their way through the start-up phases of a complex, new program. But most participants in the learning process believe that Headquarters' centrist views have been so extreme as to create problems which were avoidable even without benefit of hindsight. In sum, with control, not action, the watchword for Superfund, the Regions and the program have suffered.

- Program Needs to Recover from Turmoil.

The Superfund program has recently undergone intensive scrutiny as a result of various Congressional inquiries, GAO, Justice Department and other investigations. This has clearly taken its toll on Headquarters and Regional staff morale. For the past several months Superfund managers have spent countless hours testifying, submitting documents for the record, categorizing "enforcement sensitive" files, and being interviewed by numerous investigating bodies. More than anything else, the program now needs strong but supportive leadership and a chance to recover from its recent turmoil. It is evident this process has already begun.

RECOMMENDATIONS: SUPERFUND ACTION AGENDA

As we interviewed staff at all levels in Headquarters and the Regions, there emerged a long list of recommendations the Agency could follow in developing a more aggressive and responsive Superfund program. We have tried to capture these proposals by creating an Agenda for Action for the Superfund program under the following four broad headings:

1. Expanding our use of the Removal program and expediting Removal actions.

2. Delegating authorities and responsibilities in the Remedial program from Headquarters down to implementation levels.

3. Resolving role conflicts among managers in the Remedial and Enforcement programs.

4. Eliminating organizational and other barriers to program success.

1. Expanding our use of the Removal program and expediting removal actions.

Interviews with Headquarters and Regional staff indicate that, to this point, the Removal component of the Superfund program has been drastically underutilized. This is so because removal actions have been regardod as too expensive in that they could be taken without benefit of the highly developed procedures required under the remedial program. In its almost exclusive reliance on remedial activities to implement the program, Superfund management has attempted to establish a system of management controls that would insure cost effective management, prudent administration of the Fund, and prevent waste, fraud, and abuse. This is consistent with management expectations in the Agency and with the official interpretation of the National Contingency Plan passed on to them by Agency policy-makers.

Although removal activities have been downplayed by Superfund management in favor of remedial actions, they offer fast and effective near-term relief at many uncontrolled sites. Removal actions don't require an upfront 10% State cost share, detailed feasibility studies or complex procedures for notification of responsible parties. Furthermore, they can be carried out under national time-and-materials contracts which save time because the lengthy public bidding procedures don't have to be followed. We are confident the Agency could initiate response action at NPL sites from six to nine months sooner than is presently the case under the remedial program by utilizing the removal program as recommended here. The downside, of course, is that removal

activities can get expensive if they go beyond simple surface cleanup and are not properly supervised.

During the course of our interviews, we were informed that for approximately one-half of the sites on the National Priority List there exists a potential threat of fire, explosion or other direct release that could be stabilized now by an immediate removal action in the form of a simple surface cleanup. We recommend that a comprehensive effort to employ removal authorities to stabilize site conditions begin now, and that it focus solely on activities that would have been taken in any event under the remedial program. In our opinion, the wording contained in Subpart F of the National Contingency Plan is flexible enough to accommodate such activities as pumping out lagoons and/or removing drums, tanks and surface debris from sites (cf. Section 300.65: "Immediate removal action shall be deemed appropriate in those cases in which the lead agency determines that the initiation of immediate removal will prevent or mitigate immediate and significant risk of harm to human life or health or to the environment from such situations as: (1) human, animal or food chain exposure to acutely toxic substances; (2) contamination of a drinking water supply; (3) fire and/or explosion; or (4) similarly acute situations").

Indeed, we can assume, as many of our interviewees do, that some removal activity will be more cost-effective if performed sooner rather than later. For example, pumping out ponds and lagoons before floods or heavy rainfall cause them to overflow not only makes sense but can prevent the need to construct dikes, holding ponds or other interim measures until the remedial program can be put into play.

In addition to following our recommendation to utilize the removal program in a focused way to respond rapidly with stabilizing actions at all sites where the threat of a release exists, OSWER management should take steps to simplify the removal program and make it more effective. We recommend the following:

- Develop and promulgate removal program Guidance by August 1, 1983. Such Guidance should focus the program on surface cleanup activities and the design of a clean hand-off of each project to the remedial program as a guarantee of effective oversight.

- Once Guidance has been issued, immediately start a phased delegation of authority to the Regions to operate the removal program within specified dollar limits. We recommend giving the Regions authority to approve expenditures of up to $1 million at each site, but the dollar

amount at which phase-in commences can depend on the record each Region has established in meeting its commitments.

- o Revise the National Contingency Plan to eliminate the distinction between "immediate" and "planned" removal and discard or defer the current 10% State cost share requirement for planned removals.

- o Reformulate the National and Regional Response Teams to bring their expertise more directly to bear on expediting removal actions.

2. Delegating authorities and responsibilities in the Remedial program from Headquarters down to implementation levels.

Most of our interviewees at Headquarters and in the Regions told us the biggest barrier to getting the job done under the remedial program was that "all decisions are made at the highest levels in Washington." Our own examination of the issue supports this assertion. Notwithstanding even the best of intentions at Headquarters, it is virtually an impossible task to supervise every detail of a large and complex scattered-site construction program from Washington, D. C. Other federal agencies, including HUD, DOT, the Corps of Engineers and FEMA have learned this lesson and, for that matter, so has EPA as a result of long experience with its construction grants program for sewage treatment facilities. In retrospect, it is hard to understand why more conscientious effort wasn't made to apply the lessons learned from the construction grants program directly to Superfund. In terms of their program operating and oversight requirements, there are many similarities.

The issue regarding delegations was described to us as not merely a Headquarters-Regional concern. Even within Headquarters, important decision-making prerogatives have been closely guarded by the Administrator and the Assistant Administrators for OSWER and OLEC. Because Headquarters managers have lacked clear mandates to exercise authority on their own, almost every dispute has had to be elevated to the highest levels for resolution. Even in areas where AA's were expected to provide only supporting services to the Superfund program, they soon took on roles as final arbiters and decision-makers in their own right. Consequently, the Agency has been unable to transcend its media-based matrix organization and mobilize itself to effectively implement the Superfund program.

We recommend the process of delegating remedial program authorities and responsibilities to implementing organizations within the Agency begin now. Specifically, we propose the following:

- Immediately delegate authority for funding decisions between $2 and $5 million to the Assistant Administrator for OSWER and permit the Superfund program Office Director to approve funding proposals for projects up to $2 million. These limitations should be expanded based on experience.

- Commence a process of phased delegation of key Superfund program activities to each Region in accordance with schedules to be tracked in the Administrator's Management Accountability System. The exact rate and timing of events can be based on each Region's capability to meet its commitments under the program, but overall the process should conform to the following critical milestones:

  - By August 1, 1983, schedules for delegating program activities to each Region must be complete.

  - By September 1, 1983, all internal guidance necessary to support delegation of these activities must be promulgated throughout the Agency.

  - By October 1, 1983, delegation to the Regions commences.

  - By October 1, 1984, delegation of key activities to the Regions must be substantially complete. Superfund monies must by now be allocated to the Regions on an annual basis according to a formula covering projected remedial and removal program activity levels.

- The delegation schedules and guidance documents required to be developed by the milestone dates above should focus on the following key Superfund activities:

  - Community Relations plans.

  - Remedial Investigation/Feasibility Studies (up to an appropriate dollar limit).

  - Cooperative Agreements/State Superfund Contracts.

  - Selection of Remedy and Record of Decision (up to an appropriate dollar limit).

  - Engineering design and construction activities.

  - Section 106 Administrative Orders.

  - Section 107 Cost Recovery actions.

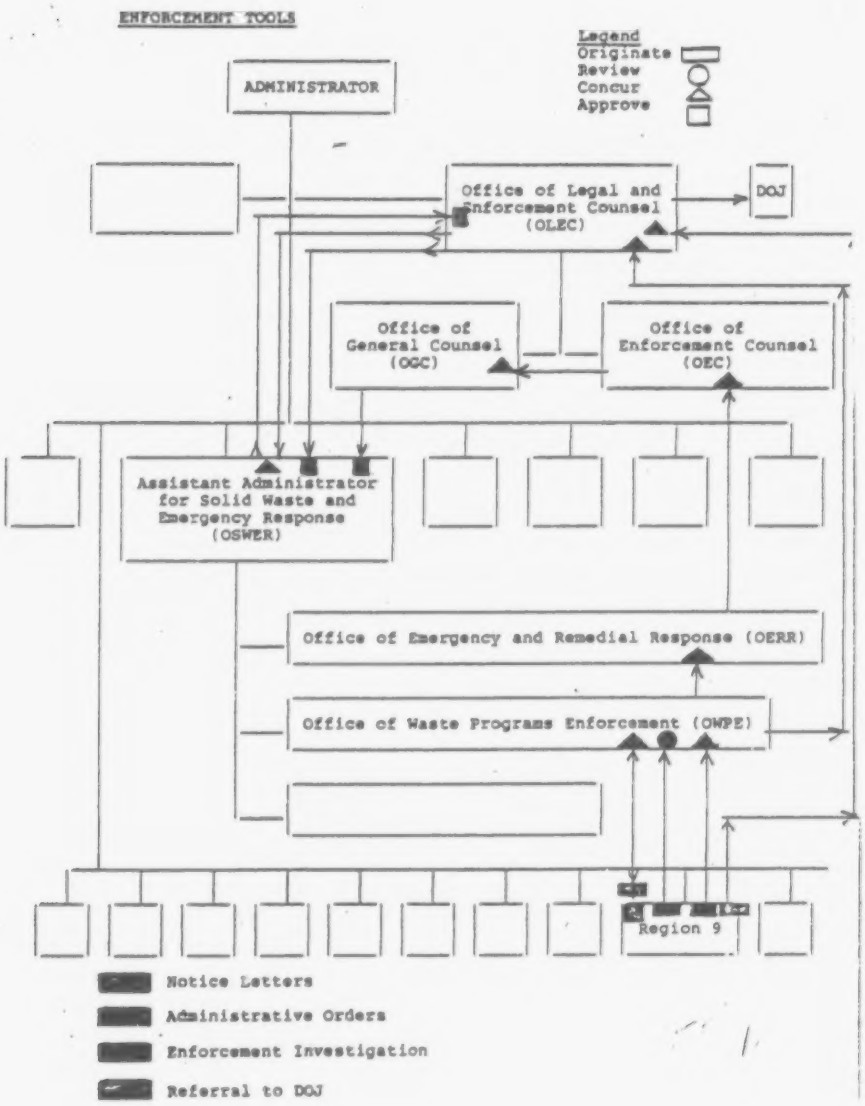
- Develop internal management procedures, oversight controls and accountability measures as required in accordance with good management practice, taking care to involve the States in this exercise to insure complete reporting of Superfund accomplishments. All necessary internal management controls should be in place at the time delegation to the Regions commences on October 1, 1983.

- For the long term, evaluate the appropriateness of adopting an overall program oversight framework for Superfund similar to that currently in effect for the multi-billion dollar construction grants program. This entails: (1) full authority to Regions or States for projects up to certain dollar limits, (2) Headquarters concurrence (or approval) for major, complex construction projects above those limits, (3) quarterly Regional reporting on obligations and outlays against established targets, (4) a specially-directed audit program run by the Office of the Inspector General to uncover instances of waste, fraud, or abuse, and (5) mid-year and year-end visits to the Regions by Headquarters staff to review performance.

3. Resolving role conflicts among managers in the Remedial and Enforcement programs.

The issue evoking perhaps the most intense feeling among our interviewees concerned the role being played by enforcement lawyers in the Superfund program. Technical staff of the remedial program at OSWER Headquarters and in the Regions are critical of what they perceive as the lawyers' efforts to second-guess their program judgments and block them from taking responsive cleanup actions at sites. A chart provided by Region 9 (following page) graphically depicts this concern. The lawyers, for their part, believe they have been following management expectations to conserve the Fund by obtaining as many private party cleanups as possible. They are frustrated that the technicians have been able to expropriate their carefully-prepared cases simply because they have money to spend. The problem has been additionally fueled by a continuing policy conflict between the former AAs for OSWER and OLEC and the organizational arrangement whereby Regional enforcement lawyers report up the chain of command to the AA for OLEC and not to the Regional Administrator. These conflicts are important because they have real consequences for the level of resources allocated to each program and for the type and number of enforcement actions--administrative or judicial--carried out under Superfund.

Resolving role conflicts between technicians and lawyers in the Superfund program is largely a matter of establishing clearer expectations regarding their respective duties. This process must begin with better communications at the top. Accordingly, we recommend the following:


ENFORCEMENT TOOLS
Legend
Originate
Review
Concur
Approve
ADMINISTRATOR
Office of Legal and Enforcement Counsel (OLEC)
DOJ
Office of General Counsel (OGC)
Office of Enforcement Counsel (OEC)
Assistant Administrator for Solid Waste and Emergency Response (OSWER)
Office of Emergency and Remedial Response (OERR)
Office of Waste Programs Enforcement (OWPE)
Region 9
Notice Letters
Administrative Orders
Enforcement Investigation
Referral to DOJ

- The Administrator should issue a directive designating the AA for OSWER as management lead for all matters regarding Superfund program operations, including enforcement. This means that, all things being equal, remedial and removal actions will drive Superfund implementation, and enforcement will be integrated into overall program administration as an important, but by no means dominant, activity. The AA for OLEC will serve the AA for OSWER in an attorney-client relationship, advising on matters of legal sufficiency and preparing general enforcement guidance under OLEC's policy development mandate.

- With respect to classification of sites for potential long-term remedial or enforcement action, designations should be adhered to for as long as possible. Enforcement program efforts should be concentrated on sites that are "ripe" for such action, leaving a clear field to the technical people for Fund-financed activities. Regular meetings should be held among OSWER and OLEC Office Directors to discuss enforcement plans and the status of remedial activities, and to make necessary adjustments in time to avoid duplication of effort on the part of Agency staff. Since there are more than enough sites on the National Priority List to fully occupy both the remedial and enforcement programs, this recommendation in no way deemphasizes the Superfund enforcement role. Rather, it seeks to channel all EPA's energies to solve environmental problems, rather than to waste effort in internal conflicts.

- Complete remedial investigation/feasibility studies at hazardous waste sites before commencing negotiations with responsible parties. Permit a brief "window of opportunity" for companies desiring to come forward and negotiate settlements early in the process, but do not allow this to delay cleanup actions.

- Do not delay cleanup actions using Fund dollars where negotiations with responsible parties have failed to produce agreements by a specified deadline date. Make firm deadlines an integral part of our negotiation strategy.

- Take immediate steps to move the OLEC hazardous waste lawyers from the Fairchild Building back to Waterside Mall so they can work in close proximity to their OSWER program clients. Communications problems caused by the fact that Superfund lawyers are located about a mile-and-a-half away from program technicians suggest that such a move should receive highest priority in the Agency's relocation plans.

4. Eliminating organizational and other barriers to program success.

This section contains a list of additional recommendations based on our interviews with program staff. Taken as a whole, they complete the Action Agenda we have proposed for the Superfund program by pointing to important near-term tasks that need to be done if success is to be realized.

- By December 31, 1983, OSWER and OPRM should complete a joint study on the "Son of Superfund" question. Among other things, this study should address whether and what kind of successor program to Superfund should be in place by September 1985, when taxing authority under the current program expires.

- By December 31, 1983, make appropriate revisions to the National Contingency Plan. Special consideration should be given to:

  - eliminating or deferring the 10% State cost share for remedial planning activities.

  - providing additional guidance on appropriate extent of remedy ("how clean is clean").

  - reevaluating our operations and maintenance policy in light of its impacts on State participation in the program.

  - lowering certain threshold criteria on the use of removal authorities to undertake simple surface cleanup activities.

- Provide additional Superfund resources to the Regions to carry out removal and remedial activities under the new delegations strategy. Provide additional resources for Headquarters and Regional enforcement, and for key support services such as contract and financial management operations, laboratory analysis and audits.

- By October 1, 1983, implement a revised oversight program for State activities carried out under Superfund. The oversight program should feature accountability measures, common definitions of terms, and methods of reporting that are agreed to by EPA and the States. Superfund managers can utilize the Hazardous Waste Work Group organizational arrangements already established between EPA and the National Governors' Association/ASTSWMO.

- By August 1, 1983, the Regions should complete Superfund obligation strategies in consultation with each State to ensure that sites eligible for remedial action are submitted to EPA in a timely manner.

- By July 1, 1983, issue final Agency policy and guidance on the following major issues:
  - Fund/Enforcement Interface.
  - Federal Facilities.
  - Mining Wastes.
  - RCRA Permitting for On-site Reburial.
  - Indian Lands.
- By September 1, 1983, eliminate unnecessary duplication and unproductive internal reporting in the Superfund program. Make necessary improvements to rationalize the program's complex data processing and tracking systems to make them more useful to managers and decision-makers. Complete study on the flow of records and decision documents.

RECOMMENDATIONS: STRATEGIC OPTIONS FOR RCRA

Our interviews with Headquarters and Regional staff clearly indicate confusion as to the key objective of the RCRA program. OSW is pursuing many important program objectives simultaneously and with equal effort. The result is that only a few key activities have been adequately undertaken or accomplished. In addition, the program is strapped for resources, especially in the Regions, where RCRA has been heavily tapped in order to cope with the more visible problem of Superfund sites.

RCRA is a complex program. Among other things, it requires the Agency to:

- Assist States in obtaining authorization to run the program in lieu of EPA.
- Maintain and periodically update a listing of hazardous wastes.
- Revise existing regulations to make them more cost-effective under E.O. 12291.
- Develop new regulations to fill in gaps in the regulatory process, such as rules for small generators, boilers, and waste oils.

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- Issue permits to active hazardous waste facilities in States not authorized to conduct their own permiting programs.

- Operate a compliance program based on Interim Status Standards, a regulatory framework subject to change, and a very small universe of permitted facilities.

- Bring enforcement actions (administrative, civil, and criminal) where imminent hazard exists and where facilities violate Federal standards.

In our examination of RCRA program activities, especially in terms of how they often came in conflict with each other, we found it difficult to get beyond the obvious fact that the program lacked a clear, overriding goal to guide implementation. Although RCRA began with such a goal, the pursuit of all its constituent parts has clearly overwhelmed the Office of Solid Waste as the program evolved over the years.

Accordingly, our principal recommendation--even before we get to a detailed management review and evaluation of permitting, enforcement, State delegation, and regulatory development activities under RCRA--is for the Agency to step back and sort out its goals and expectations for the program, both for the next few years and in the long-term. No other management reform makes sense unless the basic direction is set.

Our respondents were very clear in their view that the RCRA program needs to regain its primary focus on reducing the most significant threats to human health and the environment. We concur. In the past few years the main objective of the program has changed almost annually as the Agency discovered new issues and new possibilities. Two years ago the main concern was getting regulations issued. This evolved into an effort to revise the regulations to implement E.O. 12291. Now, as EPA and the States begin to implement our regulations, we must focus all our efforts on the goal of environmental protection. With this goal firmly in mind, the major program objectives should be to:

1. Focus permitting and enforcement activities on those facilities and generators that pose the most significant threats to human health and the environment.

2. Invest resources now to create a sound management and regulatory basis for the future, when primary program responsibility will rest with the States.

3. Promote compliance with standards and regulations through a strong enforcement program and oversight of State programs.

Each of these three main objectives will require some reshuffling of the current program. In some areas resources will need to be reassigned. The primary change required to achieve these objectives is that senior Agency managers need to agree that these are the primary objectives. Once this has been achieved, these policies need to be clearly stated so that the Regions and States know what is expected of them. It will then be possible for the program to make the changes necessary to ensure these goals are accomplished in a reasonable time.

To aid in this endeavor we offer this outline (based on interviews with OSWER Headquarters and Regional staff) of what a unified RCRA program might look like.

1. Focus on Reducing Most Significant Threats to the Environment.

To achieve this objective, priority should be placed on the following activities:

- Permitting and enforcement actions should be undertaken first at those sites which threaten drinking water supplies or where improper incineration of wastes is suspected. The implications of this approach for our current strategy is that we would revise downward our original, highly ambitious permitting targets and stop calling in a large number of Part B incinerator and storage applications. We would concentrate our permitting efforts instead on those land disposal facilities where we are finding problems under interim status and on the 50 largest incinerators, in order to permit the greatest incineration capacity while still emphasizing the protection of ground water.

- RCRA enforcement actions would be focused on cases where violations threaten environmental integrity. We would shift from inspecting 100% of facilities to inspecting at fewer sites, while conducting comprehensive follow-up actions, thus increasing substantive compliance with our regulations. Again, the focus should be on facilities that threaten to contaminate ground water. A high level of non-compliance with our interim status regulations is already being recorded for facilities that monitor ground water. The Office of Waste Programs Enforcement is already beginning to move in this direction.

To support the above efforts the program needs to begin now to develop criteria for choosing corrective actions appropriate to different land disposal sites and different kinds and degrees of contamination. Without this kind of guidance, the Agency might fall into the mistake of having all major decisions sent to the Office of Solid Waste in Headquarters for final review, a pattern which would negate one of our primary goals, State authorization.

2. Invest in Creating a Sound Basis for Future Programs.

Over the past two years, EPA has placed considerable emphasis on authorizing States to assume responsibility for the RCRA program. This strategy has been quite successful for Phase I of the program. It appears, however, that some States are balking at Phase II and final authorization, due to concern that State grants may decrease and/or disappear. In addition, there is natural reluctance on the States' part to take on a program that is undergoing constant change. Given this situation, it appears unlikely that the majority of States will obtain final authorization by January of 1985 as the statute requires. If this does not occur, the statute requires that State programs revert to EPA. It is reasonable to assume that the Congress will, in fact, amend RCRA to extend this deadline by one or two years, thus allowing interim authorization to continue past January 1985. EPA has the opportunity to invest now to create a more complete program for delegation. To this end, the Agency should:

- Support a one or two year extension of the deadline for final RCRA authorizations.
- Diminish emphasis on State authorizations in relation to other RCRA activities. Continue to seek Interim Phase I and Phase II authorizations, with emphasis shifting to the latter.
- Develop prototypes for permitting, and provide technical guidance to ensure successful State implementation of the permitting program after Phase II or final authorization. The Agency should also commence discussions under the ASTSWMO contract with State program directors to develop agreed-upon protocols for RCRA program oversight and reporting relationships.
- Work with State and Regional offices to develop a system to disperse technical information to States quickly and easily to support State permitting and enforcement efforts.
- In developing new regulations assume States will be the parties implementing the regulation and develop rules accordingly (this argues for clearer and more concise regulation writing).
- Emphasize new regulations and improvement of existing regulations over Regulatory Impact Analysis work, although the latter is also important. Work is especially needed in such areas as small generators, boilers, and waste oils, and in completing the mining and utility waste studies required by the 1980 Amendments to RCRA.

- Focus regulatory improvement activity on strengthening selected existing regulations. For example, preliminary information suggests the greatest environmental and cost-effectiveness "payoff" should come from revising regulations for landfills (particularly liner requirements), incinerators, and storage facilities.

3. Promoting Facility Compliance With a Strong Enforcement Program.

Under Interim Status, EPA and the States have been following a strategy of inspecting the majority of RCRA facilities annually in order to demonstrate a strong enforcement presence. Now is an opportune time to revise that strategy to show we mean business regarding compliance. It is critical in a new program such as this for EPA and the States to establish a credible and visible enforcement program and make clear that known violators will be subject to enforcement action. To accomplish this we should:

- Issue guidance directing Regions and States to target inspections toward the most serious violators.

- Revise downward the number of total inspections and instead follow up all violations discovered that pose a threat to human health or the environment.

- Work with the Regions and States to select for enforcement action those facilities and generators that are the most significant, in terms either of the threat they pose to the environment or their precedent-setting value.

To implement this kind of program, it is clear that additional resources are needed. For example, when a Regional Environmental Services Division conducts a sampling inspection--which is the only way to really find out if a site is posing a threat to the environment--it takes 25 work days to prepare for the inspection, go to the site, take the sample, do the laboratory analysis and, finally, analyze the results. Most of the Regions only have a few RCRA enforcement work years in their Environmental Services Divisions, and they have a number of other responsibilities in addition to conducting inspections.

An Addendum: Working Toward the Future

We undertook this study in order to gain insight as to how we might improve the implementation of the Agency's hazardous waste programs. Anyone who has watched other programs evolve

can recognize a new program's growing pains. Here, as elsewhere, the classic mistakes that have bedeviled earlier programs have made themselves felt in RCRA. In this case though, we have the opportunity to look back when we have only just begun. There are some issues in the RCRA program that are not so important right now, but will become critical next year and the year after that. The following is a list of some of the issues we should start working on right now, to ensure that another study of this kind is not necessary next year.

- The Agency needs to develop a comprehensive set of hazardous waste management principles to guide all our programs' regulations on hazardous waste.

- OSW and OPRM together should evaluate alternative hazardous waste disposal methods and policy options and determine how we might choose among these alternatives.

- We should evaluate State siting laws, as well as industry's success in siting new hazardous waste facilities. We should also begin sketching out possible options in case the Federal government is ever required to play a role in this controversial issue. We might look to the example of siting the MX missile and nuclear power plants, and see what we can learn from these experiences.

- We should reevaluate some of the decisions we have made regarding the solid waste program, particularly as they relate to impacts on our hazardous waste management responsibilities under RCRA.

NEXT STEPS

This report lays out in broad terms and in one place the major management and policy factors impeding the complete and efficient operation of two of EPA's newest and most visible programs. We all know that the start-up phases of both RCRA and Superfund have been imperfect. With the advent of new leadership, the time is right to paint clearly--but not in exhaustive detail--the principal problems the new Administrator and his key assistants will find before them as they bring these programs to full vigor.

In the weeks to come, the Office of Management Systems and Evaluation will work with OSWER to identify the most important indicators of progress for tracking in the Administrator's Management Accountability System. We are also prepared, should OSWER request our assistance, to undertake more detailed and focused analyses of specific program management systems on a consultative basis. We also recommend that a follow-up management review be conducted in the fall to evaluate the progress made under the new OSWER leadership.

Finally, this report is dedicated to all of the EPA professionals working in or with RCRA and Superfund. Its findings and recommendations are a reflection of the candor of those who shared their program experience with the study team. We hope management and staff will find the report both thoughtful and constructive and take special care to consider its recommendations as an agenda for action in the months to come. To all of you who participated in this management review, thank you for your assistance and cooperation.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 7 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Management Review of OSWER Programs
OSWER Response

FROM: Lee M. Thomas
Assistant Administrator

TO: Al Alm
Deputy Administrator

Last spring, the Office of Management Systems and Evaluation (OMSE) conducted a study of the Office of Solid Waste and Emergency Response (OSWER) to determine the adequacy of the Office's management of its RCRA and CERCLA programs. The report which resulted from the study is largely based on interviews with OSWER, Regional and certain Headquarters Office personnel. These interviews took place last March and April and provide a generally valid picture of how many staff perceived the issues and problems affecting Superfund and RCRA at that time. The report provides a useful service by pulling together the concerns and proposed actions of OSWER and Regional staff, presenting them in a clear and understandable manner, and supporting staff views with OMSE analytic input. Many of the proposals contained in the OMSE report have been implemented and others are in process.

The purpose of this memorandum is to respond to the major findings and to the specific recommendations listed in the report. I am hopeful that this response will satisfy the concerns raised by various parties, including Congress and the press, in the context of questions relating to EPA's progress in implementing RCRA and CERCLA.

Findings

1. OSWER appreciates the attention OMSE has given to its accomplishments under CERCLA and RCRA.

2. The Office of Solid Waste and Emergency Response is in the final stages of its program planning effort for Fiscal Years 84 and 85. The results of this effort will be to clearly define the goals and objectives of the RCRA and CERCLA programs for what is perhaps their most critical years. Long term planning will take place over the next year to identify long term roles and responsibilities of the various "players" in each program, and to discuss priorities as we see them for future years. OSWER is indeed moving to correct what we agree was the major stumbling block to the successful implementation of OSWER's programs.

3. RCRA does establish a program which has major components competing for resources. Each of those components is critical to the successful implementation of the RCRA program. As I will discuss further in my response to the Report's recommendations, no one aspect can be emphasized at the expense of another. Underfunding of the RCRA enforcement program has been a major impediment to effective implementation of the total RCRA effort. In Fiscal Year 1984, additional resources have been made available to RCRA enforcement which will enable the Agency and authorized States to significantly develop this activity. In addition, it is absolutely critical that we continue our pursuit of State authorization. Without the partnership with the States, EPA would be paralyzed. It is to our advantage, not to mention a statutory requirement, to work toward final authorization by January 1985, for as mary States as possible. We will continue to do so. I firmly believe that FY 84 will see a major step forward in the overall RCRA program. Finally, we believe the Report's comments regarding CERCLA to be supportive of the way we view RCRA, that is, we need to address many goals concurrently.

4. I agree that until recently there appeared to be conflicting goals in the implementation of the CERCLA program. I strongly believe we are working toward clear resolution of conflicts and toward aggressive implementation of the CERCLA program.

Specifically, OSWER is undertaking the review of the National Contingency Plan (NCP), as well as other guidance and regulations to determine whether it is appropriate to readjust some of our controls of the Fund to encourage more aggressive clean-up of sites. Once that analysis is complete, OSWER will be able to make an informed decision concerning its course of action.

In conjunction with that review, OSWER will re-examine the draft claims regulations (under Sections 111 and 112) to determine whether claims can be used as a vehicle to encourage more private party clean-ups and still be consistent with overall program strategy, priorities and available resources. Furthermore, the Site Management Plan concept we are instituting will resolve many of the Fund-response/Enforcement conflicts. The Site Management Plan for each NPL site will define the roles of each entity involved (OWPE, OERR, OECM, States, etc.) and set targets for accomplishing each phase of the CERCLA process, including negotiations, Feasibility Study work and cost recovery if necessary. In sum, it will create a management umbrella to ensure the successful clean-up of each site.

The requirement for States to cost-share for upfront planning activities has been waived. In addition, States are now required to commit funds only after the Feasibility Study has been completed and the projected construction costs are clear. We agree that the previous requirements for State funding commitments contributed significantly to project delays and have taken appropriate steps to correct it.

As I have discussed above and will further elaborate in my response to the Report's recommendations, OSWER has shifted direction in the overall implementation of the CERCLA program. I agree that many barriers hindered site clean-up, among them a highly centralized management system, Headquarters' failure to delegate and a restrictive concurrence process. I believe that OSWER's actions, both as a result of the OMSE Report and our own internal evaluations, will prove to be appropriate to rapidly moving the CERCLA program toward more successful site clean-up. The Office is finally settling down to do just that.

The next part of this memorandum deals with the specific recommendations contained in the Report.

A. Superfund

1. Expand our use of the Removal program and expediting removal actions.

OSWER has made a series of changes in the removal program. For instance, we more than doubled removal activity (in terms of both sites and dollars) in the Third and Fourth Quarters of FY 83 over all of FY 82 and early FY 83. I have also issued guidance, which the Regions are in the process of implementing, to evaluate those potential sites on the NPL which contain threats where removal action may be warranted. The estimate is that one quarter of the NPL sites pose such threats. The Regions have been directed to take removal actions where appropriate.

We agree that the removal program should be used flexibly and effectively to abate threats where they exist. However, our authorities to take removal actions must be integrated with the planned remedial actions at sites, as well as related enforcement actions. Furthermore, the removal program is limited by statute in terms of time, dollars spent and the extent of cleanup allowed. As a result, removal actions cannot substitute for certain remedial actions and cannot be expanded to address all problems. This concept was reflected in my guidance to the Regions.

As I discussed previously, we are reviewing the NCP to determine what changes are needed to better implement CERCLA. The questions of planned and immediate removals, and State cost share requirements are among the myriad topics to be analyzed.

Finally, the suggestion was made to reformulate the NRT and RRT's to bring their expertise more directly to bear on expediting removal actions. While I believe that their present organizations do enable them to effectively expedite removal actions and are doing so, I have asked for suggestions from NRT members on how that group can be made a more effective body in operational and policy-making roles.

2. Delegating authorities and responsiblities in the Remedial program down to implementation levels.

Delegating authorities to the appropriate levels of the Agency is one of my highest priorities. Actual delegation has not been accomplished in as rapid a manner as I might like, but I believe the schedule suggested by OMSE is far too ambitious, even for a program in which long operating experience has been developed. We are currently providing policy guidances, training, establishing tracking systems and developing oversight programs

to enable OSWER to fulfill its ultimate role as national managers of CERCLA. All of these activities are necessary for decentralization to work. It is in many ways parallel to the set of actions which are required for state authorization to be effectively implemented for RCRA. We expect issuance of the delegations guidance shortly.

3. Resolving role conflicts among managers in the Remedial and Enforcement programs.

OMSE discusses at length "role conflicts among managers in the Remedial and Enforcement programs." I agree there has been a complicated and often frustrating process for moving at NPL sites. As I testified before Congress, these conflicts originate to some degree in the statute itself. The problem becomes more challenging when separate organizational elements have principal responsibility to implement portions of the program that are in competition.

We now have a straightforward system of classifying sites (Fund lead, Enforcement Lead, State-enforcement Lead, etc.). This is the foundation for all subsequent planning. We have developed and are refining an RI/FS policy which further clarifies the response process for both the enforcement and remedial organizations. As I mentioned earlier, the use of the Site Management Plan concept will greatly improve the perceived and actual conflicts arising from the multiple organizations involved in CERCLA. In addition, we have established OWPE/DOJ/OEC task forces which further clarify roles and relationships between EPA technical enforcement staff, EPA legal staff, and DOJ attorneys and make for more effective management of the process by which enforcement cases are developed and, where necessary, litigated.

4. Eliminating organizational and other barriers to program success.

OSWER is addressing each of the recommendations listed in this section of the OMSE report. A Task Force on the reauthorization of Superfund has been established, we are reevaluating the NCP to address the concerns described in the report, and others. A revised State Oversight program and revised obligation strategy are "in the works"; their timing, however, is less ambitious than OMSE's. Additional resources have been requested for the remedial, removal and enforcement programs.

In sum, while the CERCLA program still has many hurdles to jump before it could be considered smooth-running, it is clearly moving rapidly in that direction. I fully expect to reach that goal by the end of FY 84.

B. RCRA

1. Focus on Reducing Most Significant Threats to the Environment.

I agree that the RCRA enforcement and permit programs should focus on the most significant environmental problems and they have. Because the land disposal and incinerator regulations were delayed, the only permitting possible until mid FY 1983 was for storage and treatment facilities, hence the large number of storage and treatment Part B permit applications requested. Now that the land disposal and incinerator standards for permitted facilities have been promulgated, the emphasis has shifted to those facilities. Incinerators and land-based facilities will continue to be the first priority for permitting until all are completed. At that time the Agency and the States will once again direct their attention to those facilities posing lesser environmental threats through the normal permitting process or class permits.

Furthermore, OMSE apparently misunderstood OSWER's RCRA inspection and enforcement strategy. It calls for 100% of the major handlers to be inspected each year. By definition, major handlers encompass all incinerators, all land-disposal, land treatment and surface impoundments (ground-water monitoring facilities) and selected other facilities, as well as generators and transporters whose operations pose serious threats to public health and the environment.

2. Invest in Creating a Sound Basis for Future Programs.

OMSE suggests OSWER de-emphasize State authorization in relation to other RCRA activities. We disagree. Failure to authorize States will deprive the national program of creative regulatory approaches suited to special State needs. It would greatly undercut the credibility of our program with the States and prevent us from fully and quickly mobilizing State resources in regulating hazardous waste. This leverage of State personnel and funding is critical to the program's success. Perhaps more important, however, is the two-year statutory deadline placed on States with interim authorization to qualify for and receive final authorization. If if extension of that deadline is enacted by Congress, unauthorized programs will still revert to EPA in January 1986. Not only will EPA be unable to manage reverted programs but the States will be less inclined to work towards authorization if EPA fails to process their applications.

If State permitting is not pursued, facilities will continue under "interim status" and will not be uniformly upgraded. Having EPA, rather than the States, work on priority permits is an unbalanced approach that will actually slow improvement of the most significant environmental problems. States have conducted 90 percent of the compliance inspections performed in the past year. While we agree that there may be some question as to the overall effectiveness of State enforcement actions to date, we strongly believe that slowing the authorization process is not the answer. Rather, I believe we should work with the States and assist them in developing their programs through more effective oversight and technical assistance programs. Slowing the process would only serve to demoralize States and create barriers to sound implementation of the national RCRA program.

The additional recommendations under this section of the report with respect to oversight and regulation development are currently being undertaken.

3. Promoting Facility Compliance With a Strong Enforcement Program.

As I stated previously, OSWER now, and has always, supported the theory of a balanced enforcement program that concentrates on the most serious threats to public health and the environment, while at the same time places some emphasis on establishing an overall enforcement presence. Until FY 84, the Agency has been unable to fulfill its goal, due to a serious underfunding of the program. The Regional Offices this year will receive a more realistic resource allotment to enable them to properly implement the RCRA enforcement program. We are concerned, however, that the States may be less flexible in increasing budgets and our expectations may be too high. OSWER is looking at the issue of State resources and capability in its Task Force on Quality State Programs.

* * * * * * *

As with the CERCLA program, RCRA is moving in the direction the OMSE report presented. I hope this has answered most of the concerns addressed in OMSE's report. I believe that the next year will see a giant step forward in the RCRA and CERCLA programs. I look forward to continued discussions to enhance OSWER's implementation of two of EPA's highest priority programs.

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